TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [illegible]

No. [illegible]

EDWARD J. PEARCY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED APRIL 8, 1904.

(19,294.)

(19,294.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 221.

EDWARD J. PEARCY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 26, 1904.

1 In the Circuit Court of the United States for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant. } At Law. Petition for Writ of Error.

Now comes Edward J. Pearcy, the plaintiff herein and says:

1. That on or about the 16th day of February 1904, this court entered a judgment herein in favor of the defendant and against the plaintiff, in which judgment and proceedings, and prior thereunto in this case, certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore this plaintiff prays for a writ of error from the issue in this behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in this case, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, March 3rd, 1904.

JAMES C. LENNEY,
Attorney for Plaintiff.

Office & P. O. address, 149 Broadway, borough of Manhattan, New York.

2 (Endorsed:) In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Petition for writ of error. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Filed Mar. 15, 1904.

3 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Edward J. Pearcy, plaintiff, and Nevada N. Stranahan, defendant, a manifest error hath happened, to the great damage of the said Edward J. Pearcy as is said and appears by his complaint: we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be

therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 11th day of April, 1904, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, this 14 day of March, in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

[L. S.] JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.
E. HENRY LACOMBE,
U. S. Circuit Judge.

4 [Endorsed:] E. & A. C. 2128. The U. S. circuit court of appeals for the second circuit. Edward J. Pearcy plaintiff in error, *vs.* Nevada N. Stranahan defendant in error. Writ of error. James C. Lenney, attorney for plaintiff in error. A copy of the within paper has been this day received at this office Mar. 15 1904 Henry L. Burnett, U. S. attorney. M. U. S. circuit court southern district New York. Filed Mar. 15 1904 John A. Shields, clerk. 1.45 p'd.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages, numbered from 5 to 1, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Edward J. Pearcy plaintiff in error, against Nevada N. Stranahan, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day of April in the year of our Lord one thousand nine hundred and four and of the Independence of the United States the one hundred and twenty-eighth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

5 United States Circuit Court, Southern District of New York.

EDWARD J. PEARCY
against
NEVADA N. STRANAHAN.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney, within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 26th day of October, in the year one thousand nine hundred and three.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

JAMES C. LENNEY,
Plaintiff's Attorney.

Office and post office address, 149 Broadway, borough of Manhattan, New York city.

6 Circuit Court of the United States for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.
} Complaint.

And now comes the plaintiff above named and by James C. Lenney, his attorney, complains of Nevada N. Stranahan, the defendant above named, and thus complaining, alleges:

I. That at all the times hereinafter mentioned, the said defendant was and still is the duly appointed and commissioned collector of customs of the United States at the port of New York in actual and unrestricted exercise of his functions as such collector and fully vested with all the powers and authorities of his said office.

II. That on the 30th day of September 1903, the defendant being such collector as aforesaid, did, under color of his said office and through the erroneous exercise of the powers and authority in him vested for the purposes of the performance of his duties as such collector, wrongfully take and unlawfully seize forty boxes of cigars, the product of and manufactured in the isle of Pines, which said island is in the possession of and part of the United States, and brought thither direct from the said isle of Pines during the month of September

1903, by the steamer Santiago de Cuba, which said goods
7 were so wrongfully taken and unlawfully seized by the said defendant on the ground that the said goods should be refused entry into the port of New York because the said goods did not constitute a legal package within the meaning of the statutes of the United States of America regulating importations from foreign countries. That the said plaintiff was unlawfully and against his will and in spite of his formal protest duly made in writing, deprived of the possession of the said goods to which he was then, and still is, entitled, but which the defendant, enabled so to do by power and authority of his said office, had wrongfully taken and detained and still wrongfully holds and detains on the ground that the same did not constitute a legal importation from a foreign country, whereas, the said goods were not liable to duty and did not constitute an illegal or unlawful package, the said goods not having been imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must under and by virtue of the provisions of the Constitution of the United States in that regard be admitted to free entry in any port of the United States.

III. That by reason of the said wrongful and unlawful acts of the said defendant, the plaintiff has been damaged in the sum of two hundred and fifty dollars ($250.00) which is the fair and reasonable value of the said goods.

Wherefore, this plaintiff demands judgment against the defend-
ant for the sum of two hundred and fifty dollars ($250.00) with
8 interest thereon from the 30th day of September, 1903, together with the costs of this action.

JAMES C. LENNEY,
Plaintiff's Attorney.

Office & P. O. address, 149 Broadway, borough of Manhattan, New York city.

STATE OF NEW YORK, }
County of New York, } ss.:

Edward J. Pearcy, being duly sworn, says: that he is the plaintiff in this action; that he had read the foregoing complaint and that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

EDWARD J. PEARCY.

Sworn to before me this 23rd day of October, 1903.

[SEAL.]

CHAS. J. DODD,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

9 (Endorsed:) N. S. 19080. Circuit court of the United States, southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Complaint. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Custom house, N. Y. collector's office, law division. Service of a copy of the within is admitted this 27th day of Oct. 1903. N. N. Stranahan, collector. U. S. circuit court, southern district of New York. Filed Oct. 28, 1903. John A. Shields, clerk.

10 United States Circuit Court, Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant. } Demurrer.

Nevada N. Stranahan, the defendant above named, by his attorney Henry L. Burnett, United States attorney for the southern district of New York demurs to the plaintiff's complaint herein upon the following grounds:

The plaintiff's complaint herein does not state facts sufficient to constitute a cause of action against this defendant.

Dated, New York December 10th, 1903.

HENRY L. BURNETT,
United States Attorney, Attorney for Defendant.

Office & P. O. address, room 50, P. O. building, borough of Manhattan, New York city.

(Endorsed:) U. S. circuit court, southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Demurrer. Henry L. Burnett, United States attorney, attorney for def't. Due service of a copy of the within is hereby admitted. New York, Dec. 10th, 1903. James C. Lenney, attorney for pl'ff. To James C. Lenney, Esq., attorney for pl'ff, 149 Broadway, N. Y. city. U. S. circuit court, southern district of New York. Filed Jan. 20, 1904. John A. Shields, clerk.

11 Circuit Court of the United States for the Southern District of New York.

EDWARD PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

This cause having been regularly brought on for argument upon the complaint and the demurrer interposed thereto by the defendant, at a stated term of this court, held by me in and for the

southern district of New York, at the post office building, in the borough of Manhattan, city of New York, on the 20th day of January 1904, and the said cause having been duly argued by Arthur M. King, Esq., assistant United States attorney for the defendant in support of the demurrer, and by Charles J. Dodd, Esq., of counsel, for the plaintiff in opposition to said demurrer, and due deliberation having been had thereon, it is on motion of Henry L. Burnett, United States attorney and attorney for the defendant,

Ordered, adjudged and decreed, that the said demurrer be, and the same hereby is in all respects sustained.

It is further ordered, adjudged and decreed, that the complaint of the plaintiff be, and the same hereby is dismissed with costs to the defendant to be taxed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Consented to as to form:
JAMES C. LENNEY,
Attorney for Plaintiff.

12 (Endorsed:) U. S. circuit court, southern district of New York. Edward Pearcy, *versus*, Nevada N. Stranahan, Order sustaining demurrer. Henry L. Burnett, United States attorney, attorney for def't. U. S. circuit court, southern district of New York. Filed Feb. 9, 1904. John A. Shields, clerk.

13 United States Circuit Court for the Southern District of New York.

EDWARD J. PEARCY, Plaintiff,
vs.
NEVADA N. STRANAHAN, Defendant. } Judgment.

This cause having been regularly brought on for argument before the Honorable E. Henry Lacombe upon the complaint and the demurrer interposed thereto by the defendant, at a stated term of this court, held in and for the southern district of New York in the United States court and post office building, in the borough of Manhattan city of New York, on the 20th day of January 1904, and the said cause having been duly argued by Arthur M. King, assistant U. S. attorney for the defendant in support of the demurrer, and by Charles J. Dodd, Esq., of counsel for the plantiff in opposition to said demurrer, and the said court having on motion of Henry L. Burnett, U. S. attorney, attorney for the defendant made and filed a decree on February 9th, 1904, sustaining the said demurrer and dismissing the complaint herein, with costs, and the said costs of the defendant having been duly taxed by the clerk of this court at the sum of thirteen and 65/100 dollars ($13.65)

Now on motion of Henry L. Burnett, United States attor-
14 ney, attorney for the defendant, it is

Ordered and adjudged that the complaint herein be dismissed, and that the defendant recover of the plaintiff the said sum of thirteen and 65/100 dollars ($13.65) costs and that the defendant have execution therefor.

Judgment signed and filed this 16th day of February, 1904.

JOHN A. SHIELDS, *Clerk.*

Form assented to.

JAMES C. LENNEY,
Attorney for Plaintiff.

(Endorsed:) U. S. circuit court, southern district of New York.—Edward J. Pearcy, *vs.* Nevada N. Stranahan, Judgment.—Henry L. Burnett, United States attorney, attorney for def't.—U. S. circuit court, southern district of New York, Filed Feb. 16, 1904, John A. Shields, clerk.

15 Supreme Court of the United States.

EDWARD J. PEARCY, Plaintiff in Error,
against
NEVADA N. STRANAHAN, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the 4th day of March, 1904, before the Supreme Court of the United States, at the city of Washington, comes the said plaintiff in error, by James C. Lenney, his attorney, and says, that in the record and proceedings aforesaid there is manifest error in this, to wit, that by the record aforesaid it appears:

I. That the judgment aforesaid in form aforesaid given, was given for the said defendant in error against the said plaintiff in error.

II. That the said judgment was not given for the said plaintiff in error against the said defendant in error, as demanded in the complaint.

III. That the said circuit court of the United States for the southern district of New York held that the facts stated in the complaint herein do not constitute a cause of action.

IV. That in and by its said judgment the said circuit court dismissed the complaint herein, with costs.

And the said plaintiff in error prays that the judgment aforesaid
for the errors aforesaid and other errors in the record and
16 proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that he, the said plaintiff—error, may be restored to all things which he has lost by occasion of said judgment, etc.

JAMES C. LENNEY,
Attorney for Plaintiff in Error,
149 *Broadway, New York City.*

(Endorsed:) Supreme Court of the U. S. Edward J. Pearcy, pl'ff in error, vs. Nevada N. Stranahan, def't in error. Assignment of errors. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. U. S. circuit court, southern district of New York. Filed Mar. 4, 1904. John A. Shields, clerk.

17 In the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

EDWARD J. PEARCY, Plaintiff,
against
NEVADA N. STRANAHAN, Defendant.

Bond for Damages and Costs.

Know all men by these presents, that we, James A. Hill and John E. Rouse, are held and firmly bound unto the above named Nevada N. Stranahan in the sum of two hundred and fifty dollars ($250.00) to be paid to the said Nevada N. Stranahan, before the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 3rd day of March in the year of our Lord, nineteen hundred and four.

Whereas, the above named Edward J. Pearcy and others have sued out a writ of error to the Supreme Court of the United States to reverse the judgment entered in the above entitled suit by the judge of the circuit court of the United States for the southern district of New York,

Now, therefore, the condition of this obligation is such that
18 the above named Edward J. Pearcy shall prosecute the said writ to effect and answer all damages and costs; if they fail to make their appeal for the writ good, then this obligation shall be void, otherwise, to remain in full force and virtue.

JAMES A. HILL. [SEAL.]
JOHN E. ROUSE. [SEAL.]

Sealed and delivered and taken and acknowledged this 3rd day of March 1904, before me:

CHAS. J. DODD,
Notary Public, Kings County.

Cert. filed in N. Y. Co.

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

James A. Hill and John E. Rouse, being duly sworn, do depose and say, and each for himself deposes and says: That he is worth the sum of five hundred dollars ($500.00) over and above all his just debts and liabilities.

JAMES A. HILL.
JOHN E. ROUSE.

Sworn to this 3rd day of March A. D. 1904, before me.

CHAS. J. DODD,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

19 (Endorsed:) In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Bond for damages. James C. Lenney, attorney for plaintiff, office and post office address, 149 Broadway, borough of Manhattan, New York city. Approved as to form and also as to sufficiency of sureties with reservation, however to the defendant of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court, southern district of New York. Filed Mar. 14, 1904. John A. Shields, clerk.

20 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To Nevada N. Stranahan, Greeting:

You are hereby cited and admonished to appear before the United States Supreme Court to be holden at the city of Washington, on the 11th day of April, 1904, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Edward J. Pearcy is plaintiff, and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done in his behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named this 14 day of March, in the year of our Lord, 1904, and of the Independence of these United States, the one hundred and twenty-eighth.

E. HENRY LACOMBE,
U. S. Circuit Judge.

21 [Endorsed:] E. & A. C. 2128. In the circuit court of the United States for the southern district of New York. Edward J. Pearcy, plaintiff, *vs.* Nevada N. Stranahan, defendant. Citation. James C. Lenney, attorney for plaintiff, office and post office address: 149 Broadway, borough of Manhattan, New York city. A copy of the within paper has been this day received at this office Mar. 15 1904 Henry L. Burnett, U. S. attorney. M. U. S. circuit court, southern district, New York. Filed Mar. 15, 1904. John A. Shields, clerk. 50 p'd.

22 [Endorsed:] United States Supreme Court Edward J. Pearcy pl'ff in error, *vs.* Nevada N. Stranahan def't in error. Endorsed on cover: File No. 19,294. S. New York C. C. U. S. Term No. 221. Edward J. Pearcy, plaintiff in error, *vs.* Nevada N. Stranahan. Filed April 8th, 1904. File No. 19,294.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 1.

EDWARD J. PEARCY, PLAINTIFF IN ERROR,

vs.

NEVADA N. STRANAHAN, DEFENDANT IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The plaintiff comes here under a writ of error to review and correct a judgment of the Circuit Court of the United States for the Southern District of New York, entered on the 16th day of February, 1904, sustaining a demurrer to the complaint and dismissing said complaint with costs.

The plaintiff is a citizen of the United States, resident in the Isle of Pines. The action was brought to recover a certain sum of money as damages resulting from the alleged wrongful seizure and detention by the defendant, the collector of customs at the port of New York, of forty boxes of cigars, the property of the plaintiff, the product of and manufactured in the Isle of Pines and by plaintiff brought thither direct from the said Isle of Pines, without landing them on Cuban soil, during the month of September, 1903.

The cigars were admittedly packed and stamped according to the provisions of the internal-revenue acts, which

said acts were in all respects and at all times strictly complied with. The alleged ground, however, for the said alleged wrongful seizure and detention was that the said goods were "foreign goods" and did not constitute a legal package within the meaning of the statutes of the United States of America regulating importations from foreign countries. The plaintiff in his complaint contends that the goods in question, having come from the Isle of Pines, were "not imported from any foreign country within the meaning of any valid statute or executive order of the United States, but were merchandise which must, under and by virtue of the provisions of the Constitution of the United States in that regard, be admitted to free entry in any port of the United States" (*vide* Complaint).

The demurrer was sustained on the ground that the complaint did not state facts sufficient to constitute a cause of action.

All the facts are admitted.

Assignment of Errors.

I.

That the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error.

II.

That the said judgment was not given for the said plaintiff in error against the said defendant in error, as demanded in the complaint.

III.

That the said Circuit Court of the United States for the Southern District of New York held that the facts stated in the complaint herein do not constitute a cause of action.

IV.

That in and by its said judgment the said circuit court dismissed the complaint herein, with costs.

ARGUMENT.

The sole issue before this learned court is the status of the Isle of Pines. The question is whether or not the Isle of Pines, from which island the goods were admitted to have been brought, was, in September, 1903, a foreign country, so that goods brought thence were "articles imported from a foreign country," according to the terms of the Dingley act (1897, 30 Stat., p. 151). If the Isle of Pines is a part of the United States, the Collector committed conversion, and his demurrer to the complaint herein should have been overruled. In support of this contention, plaintiff respectfully submits the following argument. His two basic propositions are:

I. Up to the ratification of the second Treaty of Paris (April 11, 1899), the Isle of Pines was under the sovereignty of the Crown of Spain. It did not belong to, nor was it a part of, the Island of Cuba.

II. Under Article II of the said treaty—"Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies. * * *—the Isle of Pines passed direct from the sovereignty of the Crown of Spain to that of the people of the United States.

The argument upon the first point may well be initiated by a brief exposition of the origin and history of Spanish sovereignty over this island.

The Isle of Pines, situated approximately in the latitude of Yucatan, Mexico, and in the longitude of Tampa, Florida, and lying in the Caribbean Sea, is an island containing in area about 1,240 square miles, being almost equal in size to

our State of Rhode Island and in shape almost circular, except for a prolonged cape at its southwestern extremity, and a stant from about forty to sixty miles southerly from the Cuban shore, according as the distance is measured to the inner or the outer part of the bay which cuts into the Cuban coast line to the northward.

Prior to the year A. D. 1493, the history of this island is unknown. In that year the great navigator, Columbus, made a landing, erected the banner of Castile, and claimed the lands in the name of the then Spanish sovereigns, Ferdinand and Isabella. He named the island "La Evangelista" and occupied it as a separate discovery under the Spanish flag. It again received historical notice when almost a half century later the English Admiral, Sir Francis Drake, suffered a severe defeat off its coast in a battle with the Spanish fleet. The island's strategic position, its rich resources, attractive climate, and its state of unoccupancy by civilized people all contributed to cause it to be chosen as a rendezvous for pirates and buccaneers, who then roved the surrounding seas. Such lawless occupancy continued, except for a brief period of disputed sovereignty by the English about A. D. 1763, until about A. D. 1828, when settlement by Spain began. The Spanish government established a military station and at times also maintained a penal colony there. The next change occurred about A. D. 1880, when, after Spain's West Indian possessions had narrowed down to Cuba, Porto Rico, and the Isle of Pines, together with many very small islands, the Isle of Pines, merely as a matter of greatest economy and convenience in governmental administration and in no wise affecting Spanish sovereignty thereover, was for the time joined by its sovereign, Spain, with the municipality of Habana, of the Spanish colony of Cuba. Up to this time—*i. e.*, for a period of almost four centuries—it had not been included in the government of Cuba by any edict or act of the Spanish government. Moreover, from the time of the administrative junction up to the present day the isle

has been known among all geographers, publicists, and nations by this distinct name, and none of them have ever [illegible] very recent years, it would seem, has the great strategic and commercial importance of the island (Senate Document No. 205, pp. 64-71, incl., 59th Cong., 1st sess.), begun to be appreciated, and only then did its orphanage, so to speak, cease and its real development begin. Hence the paucity of information concerning the island and its early history.

Proposition I Subdivided.

1. Spain acquired title to and sovereignty over the Isle of Pines by right of discovery.

2. Spain, until A. D. 1899, retained the title and sovereignty thus acquired.

3. Since a territory can have but one sovereign at one time, it follows that the Island of Cuba at no time prior to 1899 acquired any title to the Isle of Pines, either expressly or by implication.

The acquisition by Spain of sovereignty over the Isle of Pines by right of discovery is internationally recognized. This sovereignty Spain retained—except possibly for a brief period of disputation by the English, about A. D. 1763—up to the ratification of the second Treaty of Paris (April 11, 1899). The continuance of this Spanish sovereignty is a historical fact. It will not be denied, plaintiff believes, by any nation or by any publicist, or even by this defendant, except, possibly, as to the effect of the arrangement of about A. D. 1880 already referred to. This arrangement in no wise affected the question of sovereignty, nor did it make the isle a part of the Island of Cuba. To construe this mere

administrative act into a surrender or cession of sovereignty is not possible under any tenet of constitutional law. Its true significance, if any, plaintiff holds to be this: That all which can be said is that it was entered upon for the sake of obtaining greater economy and convenience in governmental administration. No express cession of sovereignty was intended by Spain, nor was any implied cession or sovereignty contemplated. The arrangement effected this change and this only. Instead of continuing to manage the government of the then unimportant Isle of Pines direct, Spain deemed that a considerable saving of expense would be secured and a far greater convenience of administration obtained if the government of this isle was directed through the Spanish municipality of Habana of the Island of Cuba. With these aims and solely for these purposes, the arrangement was entered into.

In the science of international law and the sovereignty of nations, there is an all-important distinction between the case of a mere arrangement made for purposes as herein stated and a case where the isle is actually ceded or relinquished to a neighboring mainland or larger island. Administratively, the two islands were joined; politically, they remained separate, each owing allegiance to the mother country, Spain.

There is, then, no more reason for holding that the Isle of Pines at the time of the ratification belonged to Cuba than there would be for holding that Tasmania belonged to Australia instead of to the Kingdom of Great Britain, or that Barbadoes belonged to Jamaica instead of to Great Britain. These are in point with the case at bar, the government of each of the islands of Tasmania and Barbadoes being for convenience administered through the Australian Commonwealth and the British seat of government for the West Indies located at Kingston, Jamaica, respectively.

Geographical Location.

Geographically also the two islands are distinctly separate, being at their nearest point of approach about forty miles apart. Who will say that the maritime jurisdiction of the Island of Cuba extends thus far? In his search among the leading authorities on international law, this plaintiff finds them stating the extent of a country's maritime jurisdiction as follows:

> "From Bynkershoek came the modern, more precise rule; which first limited the territorial right by a cannon shot and then by a marine league."
>
> *Introduction to International Law*, p. 69 (6th ed., 1899), Woolsey.

> "The greatest reach of a cannon ball fired from a cannon on the land is, then, really the limit of the territorial sea."
>
> *Hautefeuille Droit de Neutres*, title 1, ch. 3, sec. 1, p. 89.

No authority has been found to hold that the maritime jurisdiction of one island can extend to another island located in the open sea forty miles distant from the nearest shore. Geographically, then, there appears to be no ground for holding that the Isle of Pines belonged to or was a part of the Island of Cuba.

In the absence, therefore, of any express cession of sovereignty to Cuba, or of any impliable intention to include this isle as a part of Cuba, or of any good geographical reason for so doing, it must follow that on April 11, 1899, Spain did own, and Cuba, a mere colony, did not own or include, the Isle of Pines.

The plaintiff now comes to his second proposition, viz.:

Under the terms of the second Treaty of Paris, title to the Isle of Pines passed by direct cession from the Crown of Spain to the people of the United States.

Article II of the said treaty reads:

> "*Spain cedes to the United States* the Island of Porto Rico and *other islands now under Spanish sovereignty in the West Indies,* and the Island of Guam in the Mariannas or Ladrones."

The only reasonable construction applicable to these words, it is believed, is that by Article II of the treaty, as above quoted, the United States acquired all the islands under Spanish sovereignty in the West Indies except the Island of Cuba. In support of this belief, the plaintiff submits these points with argument following:

1. That the very language of the treaty itself, as explained in the protocols and construed according to its fair and ordinary meaning, is overwhelmingly in favor of Proposition II.

2. That on or about August 14, 1899, the United States War Department, in an official letter stated:

> "The Isle of Pines, * * * was ceded by Spain to the United States, and is, therefore, a part of our territory."

3. That the maps and other data prepared and issued by the General Land Office of the Department of the Interior indicate the Isle of Pines as being United States territory.

4. That the famous "Platt Amendment" provided:

> "That the Isle of Pines shall be *omitted* from the proposed constitutional boundaries of Cuba; the title thereto being left to future adjustment by treaty."

5. That when Cuba was transferred to the government of its people, on May 20, 1902, the American military governor of Cuba was ordered by the United States Secretary of War *to continue "the present government of the Isle of Pines"* (which was American) "as the *de facto* government."

6. That by the terms of the proposed treaty, negotiated in 1903 and still pending in the United States Senate, our country's present ownership of the Isle of Pines is clearly recognized by the sections which provide for a transfer of our title to Cuba, the consideration being certain naval stations which we theretofore possessed.

7. That several hundred United States citizens, including this plaintiff, acting upon the terms of the treaty, upon the assurance of the War Department, and upon the uniform policy of this government up to May, 1902, settled in the Isle of Pines and bought property and established homes on what they believed to be American soil, thus *acquiring vested rights* in some cases years before their government had even questioned its title to the isle.

Territory Relinquished to Cuba by the Treaty of Paris

An investigation of the papers and recorded discussions leading up to the signing of the treaty shows reference everywhere and frequently made to the "Island of Cuba" as the territory concerning which "Spain relinquishes all claim of sovereignty over and title to."

The following is a partial list:

Protocol II, Annex 2, paragraphs 7, 10, and 11.
Protocol III, Annex 2, Articles I, II, III, IV, V, and VI.
Protocol IV, Annex 1.
Protocol IV, Annex 2, Articles I and II.
Protocol V, Annex 1.
Protocol VII, Annex 1, Articles I, II, III, IV, and V.

Protocol IX, Annex 1, Articles I, III, IV, and V.
Protocol X, etc.

Vide 55th Cong., 1st session, Senate Document No. 62, part I, a copy of which is submitted herewith and marked Plaintiff in Error's Exhibit A.

Indeed, section 1 of Article I of the treaty is almost the only instance where the intent, "Island of Cuba," is not thus specified. It is submitted that the great desire for laconic expression and euphonious language are alone responsible for the omission of the words "island of" from section 1 of Article I. But that "Island of Cuba" was intended as the meaning of this article is further evidenced by section 2 of the said article, which reads:

> "And as the *island* is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, * * *."

Clearly this article does not refer to or embrace the Isle of Pines. It means what it says, viz., the "Island of Cuba," and that island alone.

Under Article II of the Treaty, the Isle of Pines Was Ceded Directly to the United States.

This article reads:

> "Spain cedes to the United States the Island of Porto Rico *and other islands* now under Spanish sovereignty in the West Indies, * * *."

It is a historical fact that at this time Spanish sovereignty in the West Indies was limited to Cuba, Porto Rico, the Isle of Pines, and some very small, insignificant islands, mostly uninhabited and located round about these three large ones.

Such being the fact, it is submitted that the only reasonable conclusion from this language can be, that by the "other islands" phrase it was the intention of the parties to cede, and they did cede, the Isle of Pines direct from the Crown of Spain to the people of the United States just as plainly as Porto Rico, in the same article, was ceded. It cannot be too greatly emphasized that such is the only reasonable construction applicable to this phrase. Unless it refers to the Isle of Pines, it means nothing, and certainly it would be a most serious imputation to hold that the learned commissioners deliberately inserted words meaning nothing or worse than nothing into so important a document of state.

The best evidence of just what our government acquired under Article II of the treaty is to be found in a consideration of the

(*a*) *Objects sought by the treaty-makers:*

These on the part of the victorious Americans were twofold: the freedom of the Cubans from the tyranny of Spain, which was the principal cause of the war, and, secondly, compensation to the United States for expenses incurred. By the gift of liberty to the Cubans they received all they sought. All territory except the Island of Cuba was considered by the commissioners of both nations as being ceded to the United States. This is further evidenced by the

(*b*) *Language of the protocols and of the treaty:*

The Spanish text is said to be even more positively expressive of this intent than is the English one. The last ground for possible doubt is removed by a note presented by one of the Spanish commissioners and published as an annex to protocol No. 9. This note reads:

"They (the United States) * * * did subsequently claim the sovereignty of the latter island

> (Porto Rico) and of the others surrounding Cuba, which will render impossible its independence without the will and gracious consent of the United States, which will always have it at their mercy, owing to their control over the islands surrounding it like a band of iron * * *."
>
> Senate Document No. 62, part 1, pp. 82 and 83. 55th Cong., 3d Session.

> "This," says Daniel P. Thompson, Esq., writing in *Public Opinion* (N. Y., Dec. 16, 1905), "is as plain as words can make it; the commissioners of the United States were demanding sovereignty over the islands surrounding Cuba; they were asking freedom for Cuba, and ownership for the United States of everything else Spain had in the West Indies. Not only was this the demand of our commissioners at Paris; it was what we got by Article II of the treaty as signed. Six months after the treaty was made, no more questions had arisen over our ownership of the Isle of Pines than had come up in regard to Porto Rico. They were on the same basis exactly—possessions of the United States, acquired by treaty from Spain."

James Norton Callahan, in his work on Cuba and International Relations, speaking of the events that led up to the signing of the treaty, says (page 494):

> "The terms were liberal to Spain and just to the Americans. Not a dollar of war indemnity was asked, but this was probably because the United States knew that Spain had no money. * * * *All the West Indies except Cuba were to be ceded to the United States;* Spanish authority was to be relinquished in Cuba * * *."

Finally we have the statement itself, by one of our commissioners who negotiated the treaty, to the Committee on Foreign Relations of the U. S. Senate, "That the commissioners of the United States did not regard the Isle of Pines as being a part of Cuba, but as a separate island, that was

ceded to the United States in article 2 of the Treaty of Paris."

> See minority report of Committee on Foreign Relations, 59th Cong., 1st session, Senate Document No. 205, p. 193, a copy of which report is submitted herewith and marked Plaintiff in Error's Exhibit B.

Such, then, was the intention both of the Spanish and American commissioners. And as to the weight to be credited to the intent of the parties who make a treaty, this learned court has said:

> "The instrument (treaty), it is contended, should be most liberally construed. *Its interpretation is to be sought in the motives and policy of the parties and in their words and in their acts.*"
>
> United States *v.* Percheman, 7 Peters, 57-65.

Official Acts and Declarations Subsequent to the Treaty Support the Same View.

Not only did all the parties thus intend at the time of the making of the treaty, but subsequent acts and declarations for more than three years thereafter were almost uniformly in support of this view. We already have official declarations, both executive and legislative. It solely remains for our learned judicial department to declare itself, as plaintiff believes, by concurring in the view of the other two departments as first officially expressed.

Taking these subsequent acts and declarations chronologically, plaintiff submits the following correspondence as being the official declaration of the War Department. The letter and reply explain themselves:

> "CARLISLE, PA., *August* 10, 1899.
>
> "WAR DEPARTMENT, WASHINGTON, D. C.
>
> "GENTLEMEN: I am seeking information about the timber interests in the Isles of Pines and would

be obliged for any information you may be able to give me, especially what will be the governmental status of the island? Does it come in as Porto Rico, or under the same conditions as Cuba? And how can title be secured, etc.? I expect to go in November.

"For which information I will say thanks in advance.

"Yours, GEO. BRIDGES.

"I expect to operate sawmills. Am no land-grabber."

"WAR DEPARTMENT,
"WASHINGTON, *August* 14, 1899.

"SIR: Referring to your communication of the 10th inst., soliciting information respecting the Isle of Pines, I am directed by the Assistant Secretary of War to *advise you that the island was ceded by Spain to the United States and is therefore a part of our territory*, although it is attached at present to the division of Cuba for governmental purposes.

"A copy of an official report on the Isle of Pines is inclosed for your information, and you are advised that the disposition of public lands must await the action of Congress.

"Very respectfully,
"JOHN J. PERSHING,
"*Assistant Adjutant General.*

"Mr. GEORGE BRIDGES, *Carlisle, Pa.*"

Says the minority report of the Committee on Foreign Relations (page 212):

"It appears from the record of the War Department, printed on pages 31 to 36 of the report of the majority that from January 13th to February 16th, 1900, the Secretary of War was absent from the Department, or that he had turned over the questions relating to the Isle of Pines to Mr. Meiklejohn, Assistant Secretary * * * On the 13th and 15th of January, 1900, G. D. Meiklejohn, Assistant Secretary of War, reaffirmed the statement of Assistant

Adjutant General John J. Pershing, as to the status of the Isle of Pines made to Bridges on the 14th of August, 1899, as follows:

"'WAR DEPARTMENT,
"'OFFICE OF THE ASSISTANT SECRETARY,
"'WASHINGTON, D. C., *January* 13, 1900.

"'SIR: I have the honor to acknowledge the receipt, by reference from the honorable the Secretary of State, of your letter of the 20th ultimo asking if the islands south of Cuba, formerly belonging to Spain, now belong to the United States or to Cuba; whether you have a right to hunt along the coasts thereof in a boat too small to enter at the custom-house, carrying probably 100 pounds of ammunition, two or three guns, and two months' provisions for two men, and requesting publications descriptive of said islands.

"'In reply, you are advised that the *Isle of Pines was ceded by Spain to the United States, and therefore is a part of our territory,* although it is attached at present to the division of Cuba for governmental purposes.

"'In reply to your inquiry relative to guns and ammunition, your attention is invited to the inclosed copy of an order of the military governor of Cuba, dated September 18, 1899, modifying the instructions dated April 27, 1899. You are further informed that the Department has no publications descriptive of these islands.

"'Very respectfully,
"'G. D. MEIKLEJOHN,
"'*Assistant Secretary of War.*

"'Mr. L. C. LEITH,
"'*N. W. corner Market and Eighteenth Streets, Galveston, Tex.*'"

The language used here is significant, unequivocal, and decisive; it admits of no doubt. These letters were given wide circulation among friends and intending colonists. They were sufficient to remove any question which might theretofore have been in the mind of any colonist or intend-

ing colonists as to the isle's ownership. It was "ceded" to the United States; it became "a part of our territory."

This cession of the Isle of Pines to the United States was nowhere disputed; indeed, in several instances it was recognized by an affirmative act. As one example, plaintiff cites the action of the great Catholic Church, which in the West Indies promulgates almost the sole religious faith. This church early recognized the effect of the Treaty of Paris. Accordingly it separated the ecclesiastical power over the parish of the Isles of Pines from the diocese of Havana (Cuba) and placed it under the direct supervision of the diocese of Florida (United States).

During this period also our government published a map of the Isle of Pines. This map, many copies of which were printed and distributed, advertised extensively the attitude of the General Land Office, or, in other words, the Department of the Interior. These Land Office maps, one of which hangs on the wall of the Bureau of Insular Affairs, in the Department of War, likewise indicate the Isle of Pines as being United States territory and akin with Porto Rico.

The "Platt Amendment" Expressly Excludes the Isle of Pines from the Boundaries of Cuba.

Advancing at this point over a period of about two years, plaintiff next calls attention to Article VI of the amendment to the Army appropriation bill, passed March 2, 1901, and widely known by the popular title "Platt amendment." This amendment, which is still in force, expressly provided "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

This clause is doubly significant, showing, as it does, the attitude of both the republics. Up to this point we have been noting the acts of our own government and the atti-

tude of our own people. That the Cubans themselves claimed no conflicting title is clearly proven by their vote on June 12, 1901. Without discussion and without debate, the Cuban Congress incorporated this identical language into their own Constitution. *By so doing they expressly admitted, first, that the Isle of Pines was not then a part of the Cuban Republic, and, secondly, that the isle should not become Cuban soil unless granted to the Republic from the United States by good and valid treaty.* The effect of this action must have been to leave the isle as theretofore, under American administration and control; for when the Congresses of both countries have expressly declared that at present the Isle of Pines is not Cuban territory it must be territory of the United States. It cannot be "No Man's Land."

Says the afore-named minority report (page 190):

> "The government of Cuba, in the very act of its creation by a law of the United States known as the Platt amendment, was excluded from jurisdiction of every nature over the Isle of Pines." * * *
>
> "If the Isle of Pines ever belonged to Cuba in a geographical sense, or as a political dependency, or in the full rights of sovereignty, such rights were completely extinguished by its exclusion from the limits of Cuba by the express provisions of the Platt amendment, and by the constitution of Cuba, and by the treaty with the United States of July 2, 1904."
>
> "This careful provision, thrice repeated in the most solemn form, ought to be sufficient to silence the assertion by Cuba or by any one, however high in official station, that the Isle of Pines continues to be a part of Cuba, and that it is not and never has been territory of the United States. If it never was in any sense 'territory of the United States,' what possible right could our Congress have to require, as they did in the Platt amendment, to an appropriation bill that Cuba should expressly exclude the Isle of Pines from her territorial limits by a provision in her constitution?"

The Argument Against American Ownership.

Such evidence the American residents submit in favor of ownership on the part of the United States. We shall now examine what merit, if any, there is in the contention of the Cubans. The minority of the Committee on Foreign Relations of our Senate (59th Cong., 1st session), after a careful and painstaking consideration of the treaty attempting to provide for the adjustment of the title to the Isle of Pines, said:

> *"No act of the government, in pursuance of law, or in virtue of lawful authority, has admitted title in Cuba to the Isle of Pines."*

We now turn to the report of the majority of the same committee.

What facts are presented? In its beginning the report states the claim of the American residents—that their rights had become vested as a result of the assurances given by the Treaty of Paris, the Platt amendment, the personal letters of President McKinley, Secretary of State Hay, and Secretary of War Root, and the pledges of Governor General Wood, etc. But it does not answer these facts. The best the chairman can do is to bring out a dusty census report, and from its unfamiliar pages set forth for the first time certain statements.

The American residents deny the accuracy of this census report, compiled by Cuban employees. Moreover, they did not have access to it at the time of its alleged publication. Consequently their rights are not prejudiced nor is their demand for justice estopped. Aside, however, from any question of estoppel, the report proves nothing beyond what plaintiff has already admitted to be true. The census report, it is alleged, shows that the Isle of Pines was in 1899 included in the province of Habana for the purpose of census-

taking. At most, this proves nothing more than a continuation of the administrative arrangement already referred to (*vide*, page 5, *supra*). Cuba at this time was not a sovereign State. It was a ward, under the care of its guardian, the United States government. The Isle of Pines belonged to the United States. Under the circumstances, it was but natural that our government, which was governing both Cuba and the Isle of Pines, should leave the old administrative arrangement unaltered. At least it was not feasible to change the existing order of things for the mere purpose of taking a census, which was to be begun at once and speedily concluded.

Next, the matter of the Cuban elections is brought up. Much is sought to be made of the statement that inhabitants of the Isle of Pines participated in these, which were held in Cuba during the American occupation, in the year 1900. But the truth is, and if the chairman had made a little more careful inquiry into it he would have ascertained, that the only inhabitants of the Isle of Pines who participated in these elections were Cuban citizens resident on the Isle of Pines. The Americans did not vote. Order No. 218 of General Wood, dated October 14, 1901, is also cited. The same comment which has already been made of the census report applies also to this order. Thus far, then, nothing has been proved against the American contention; no reason for sacrificing their "vested rights" has been shown.

The Platt amendment comes next in mention. Under no view can this act be construed as transferring title to Cuba. Indeed, it expressly excludes Cuba. The minority report already referred to has this to say (page 192):

> "Article VI of the Platt amendment, in its widest possible interpretation, contains no admission of title in Cuba to the Isle of Pines. On the contrary, it disaffirms the existence of such title in the provision 'that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba.' No title

to the Isle of Pines could legally exist beyond those boundaries. Then the language of the act proceeds,—'the title thereto being left to future adjustment by treaty.' The possession of the island is not specifically provided for, but it follows the title by the intendment of law, and did not break away from the title and cross 'constitutional boundaries' to claim a rightful lodgment in Cuba. Congress made no such absurd provision in the Platt amendment."

"In fact and in law the title and the possession remained in the United States until the island should be otherwise disposed of."

"The High Strides of Our Commanding General in Cuba as Overlord of the Isle of Pines."

Such, then, remained the status of the isle until May 16, 1902, when still another act was done which can only serve to strengthen plaintiff's contention. On this day, and in anticipation of the transfer of the government of the Island of Cuba to its people, scheduled to occur four days later, our Secretary of War gave the military governor an order as to the Isle of Pines contrary to those given to Cuba. On the face of the order there was to be no relinquishment of this Isle of Pines. The explicit order was "*to continue the present government* of the Isle of Pines as a *de facto* government." It has been well said, "The Cuban Republic was about to assume sovereignty over the Island of Cuba; the Isle of Pines, being excluded by the fundamental law of Cuba from its jurisdiction, was to remain under the 'present,' that is, the *American military government*. There was no other government under which it could remain than the United States military government, which had been in control since January 1, 1899, when Spain withdrew. Furthermore, the War Department could not have failed to give instructions for the continuance of the military government unless it intended either to ignore the act of March 2nd, or to leave the isle without any government whatever."

Thus far, the plaintiff has marshalled in evidence extracts from the treaty, the official declarations of the War Department (1899 and 1902), the maps prepared by the Department of the Interior, and the proviso of the "Platt amendment," all in support of his Proposition II. It now becomes his duty to cite to this learned court an act which on its face appears to be one of the most flagrant cases of disobedience which ever occurred in the service of our government. General Wood must have been well versed in the previous legislation and correspondence in regard to the Isle of Pines. He showed this in his interview on April 17, 1902, with the three delegates sent by the American residents to learn from him the then administration's views concerning the future of the isle. In this interview he declared himself to be squarely in favor of retention by the United States. (See copy of letter stating the interview, submitted herewith and marked Plaintiff in Error's Exhibit C.)

A few weeks later (May 16, 1902) the Secretary of War ordered him *to continue* the present government of the Isle of Pines. Since this was an American military government, that must have been what he intended to be continued. Instead of obeying this order of his superior; instead of respecting the act of Congress expressly excluding the isle from Cuban control; instead of keeping his assurances to the delegates, General Wood transferred its affairs to the Republic of Cuba, by which they have since been administered.

This act, plaintiff submits, was one devoid of law or authority. It was grossly in excess of the governor's powers, or even those of the War Department staff, inasmuch as the Platt amendment had been passed, and therefore wholly void as to its power to bind our government. Mr. Thompson's article, already quoted from, has this caustic, yet apparently deserved criticism:

> "A more amazing instance of disregard of law would be hard to find. A United States Army officer

ignoring an act of Congress, and the orders of the War Department, and at the same time participating in the assumption of another state of powers, not only denied to it by law, but actually hostile to the rights and interests of the nation General Wood was supposed to represent."

The General, however, claims that he was simply obeying the order, or some order, of his superior. On a resolution of our Senate, dated February 16, 1903, he made an endorsement of which the following part is now in point:

"OFFICE OF THE LATE MILITARY GOVERNMENT OF CUBA,

WASHINGTON, *Feb.* 20, 1903.

"Respectfully returned to the Bureau of Insular Affairs. * * * Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the Governor General. The Isle of Pines as it existed under the military government *was transferred* as a *de facto* government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. *The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War.*"

59th Cong., 1st session, Senate Document No. 205, p. 7.

We find nothing in the records which will justify the last sentence of this quotation.

To this act of disobedience by General Wood, or to the violation of its powers by the War Department, as the truth may be, and not to any right or treaty, plaintiff has shown the Republic of Cuba owes her present administration of the isle. The most convincing proof of this—of the absence of legal title in Cuba—is that Republic's conduct in regard to

the proposed new treaty of July 21, 1903, which for excellent reasons has thus far failed of passage by our Congress. This document, in brief, seeks to present the Isle of Pines to Cuba as a gift. Plaintiff uses the word "gift" designedly. Of course, for the sake of the appearance of legality, a consideration is stated. But what is it? A formal agreement to present certain naval stations which are *already ours by separate treaty!*

The articles of this treaty, so far as they relate to this isle, read:

> "The United States of America relinquish in favor of the Republic of Cuba, all claim to the title to the Isle of Pines, situated in the Caribbean Sea, near the southwestern part of the Island of Cuba, which has or may be made in virtue of Articles I and II of the treaty of peace between the United States and Spain signed in Paris, December 10, 1898. This relinquishment by the United States of the claim of title to said Island of Pines is made in consideration of the concessions of coaling and naval stations which have heretofore been made to the United States of America by the Republic of Cuba."

Senator Morgan exhibits it thus (page 196):

> "If the people had notice of any possible infirmity of the title of the United States, it could only have arisen from an unjust suspicion or conjecture that the President and the Senate would sell the Isle of Pines to Cuba or give it away to satisfy some political conditions that might give trouble to the Cuban government. The people did not suspect that a 'consideration,' the amount and character of which is unknown, would be exhumed from some secret transaction about 'grants of coaling and naval stations in the Island of Cuba heretofore made,' or would ever be made the 'consideration' of the relinquishment of the title of the United States to the Isle of Pines under the Platt amendment or the Treaty of Paris. The people had no such suspicion and could not entertain it without discredit to their government. It is this secret consideration that is set up in this treaty for their undoing."

Senator Morgan continues:

"The grants mentioned in 'the foregoing leases' are, in fact, treaties that were never sent to the Senate for ratification, nor have they ever been proclaimed as treaties. * * * It will be seen that the consideration expressed therein is the annual payment of $2,000 in gold by the United States to the Republic of Cuba 'as long as the former shall occupy and use said areas of land by virtue of said agreement.' This consideration is definite and includes the entire purchase price of the lease so far as the people could possibly have ascertained if they had ever been informed officially of the terms of the agreement.

"Now, a new and unexpected condition of alleged facts is disclosed in the treaty as the consideration of the sale of the Isle of Pines to Cuba, which is stated in article 2 of the treaty as 'the relinquishment on the part of the United States of America of a claim of title to the said Isle of Pines.' A perfect title is thus reduced to a 'claim of title' to the Isle of Pines, and the people are to forfeit their homes and their actual liberties, that are native to Americans on American soil, upon and in discharge of a consideration which, if it ever existed, was kept secret until this treaty was sent to the Senate—a consideration that contradicts the very terms of the lease agreements that were signed by the President of Cuba and the President of the United States.

"This secret consideration is the only one that is stated in the treaty as the price of all the wrongs, disappointments, and hardships of more than 2,000 citizens of the United States, many of whom can never recover from the blow thus inflicted. In every possible sense this must be regarded as an act of extreme injustice that falls with crushing weight upon people who are practically helpless.

"The people of the United States are made to pay $2,000 per annum for the lease of two localities for naval stations in Cuba, *'to enable the United States to maintain the independence of Cuba and to protect the people thereof,'* after having expended more than $100,000,000 for this purpose, and, when political conditions in Cuba seem to require a further sacrifice

to save President Palma and his party from being turned out of office, the United States relinquishes all claim to the Isle of Pines, for some secret consideration, and throws into the grasp of this Moloch the rights, property, homes, churches, school houses, and the peace and happiness of more than 2,000 honest Americans, after accusing them of the hardihood of exposing their families to ruin in making rash speculations in purchasing property that the government might in some unforeseen event, or for some secret consideration, choose to turn over to the government of Cuba."

The activity of the Cuban officials in their efforts to procure the passage of this proposed treaty by our Congress shows up in brightest light the emptiness of their prior claims: for if, as they assert, the isle is Cuba's, then why this treaty? Friends of the Americans resident on the isle and lovers of right and justice everywhere have hastened to their support. This proposed treaty has thus far been successfully opposed on the ground that it gives away a valuable possession without due compensation. It is not a question of returning to Cuba something belonging to her, for throughout this brief argument has been added to argument in proof that the isle never belonged to Cuba. It is not a question of "justice to Cuba." We owe nothing. Indeed, the impartial observer would consider this island republic as being greatly indebted morally to our kind government, to whom it owes its very existence at this present time.

First, then, it is a question of keeping what by law and by right belongs to us.

An exposition of the strategic and the commercial importance of the isle is set forth in the appendices of the Report of the Committee on Foreign Relations, 59th Congress, 1st session, Senate Document No. 205, pp. 64 to 71, inclusive, a copy of which is submitted herewith.

Secondly, it is a question of our government keeping faith

with the rights and reasonable expectations of its own citizens.

In reliance upon all these public, official declarations of the United States' ownership, many hundred sturdy American men and women from at least twenty-five different States had sold out their holdings in the United States and emigrated to the isle. This took place almost entirely during the interval between the autumn season of 1899 and the spring season of 1901, inclusive—that is, subsequent to the declarations of the treaty and of the Assistant Adjutant General and prior to the raising of any question as to their country's title to this isle, the said question having been first raised by the United States government itself in the "Platt amendment."

In the isle these Americans purchased land and immediately began the making of improvements, the same as they would have done if they had removed to any other territory belonging to the United States. Believing that their government would protect them in their rights, they sought the wonderful climate, medicinal springs, fertile soil, fine timber, and other advantages offered in the island (*vide* 59th Cong., 1st sess., Senate Document No. 205, pp. 64 to 71, incl.). These people are *bona fide* citizens of the United States. They had no intention of expatriating themselves, and they now, with one accord, appeal to their own government for a final determination that they are still on United States soil. Still others, remaining behind, had sent forward money for investment. As a result of all this American enterprise and progressiveness, nine-tenths of the island, or more than 600,000 acres, now belong to our citizens, together with the improvements thereon, amounting in value to more than a million of dollars.

These American citizens are unanimously and unalterably opposed to the idea of being subjects of Cuba. They refuse to believe that the War Department misled them by declar-

ing that the isle was American territory, and that the same government will now say it is not. Their present attitude is one of strong hope and trust in the justice of this learned court when once the facts are fully and fairly presented.

The Isle of Pines, not being a foreign country under the commerce law, but, like Porto Rico, a part of the United States, it follows that the seizure, etc., complained of by plaintiff and the detention after demand made was unwarranted, illegal, and an act of conversion.

De Lima *v.* Bidwell, 182 U. S., 1, at 198 *et seq.*
Dooley *v.* United States, 182 U. S., 222.
Armstrong *v.* U. S., 182 U. S., 243.

This plaintiff is accordingly entitled to a finding that the Isle of Pines is a part of the United States, and that the judgment of the court below should be set aside and the case remanded with instructions to give judgment for the plaintiff.

Respectfully submitted.

JAMES C. LENNEY,
Solicitor for Plaintiff in Error.

NEW YORK, *February* 15, 1907.

FILE COPY.

Office Supreme Court, U. S.
FILED
MAR 2 1907
JAMES H. McKENNEY,
Clerk.

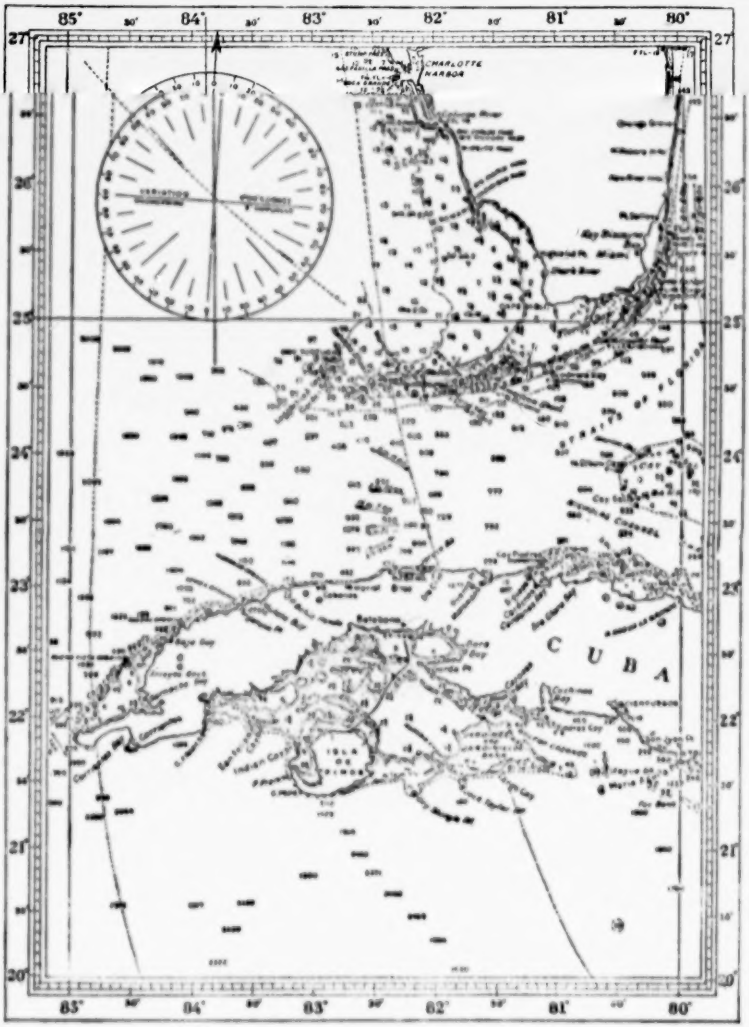
In the Supreme Court of the United States.

OCTOBER TERM, 1906.

EDWARD J. PEARCY, PLAINTIFF IN ERROR,
v.
NEVADA N. STRANAHAN. } No. 1.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT.



ISLE OF PINES—SURROUNDING WATERS AND MAINLAND.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

EDWARD J. PEARCY, PLAINTIFF IN ERROR,
v.
NEVADA N. STRANAHAN. } No. 1.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE DEFENDANT.

STATEMENT.

This case presents for consideration the question whether the Isle of Pines, an island lying about 35 miles south of Cuba, is "foreign country" within the meaning of the Dingley Act so called.

The Dingley Act (act of July 24, 1897, 30 Stat., 151) provides for the imposition of duties only upon articles "imported from foreign countries."

Paragraph 217, (30 Stat., 151, 169) provides:

> Cigars, cigarettes, cheroots of all kinds, four dollars and fifty cents per pound and twenty-five per centum ad valorem; and paper cigars and cigarettes, including wrappers, shall be subject to the same duties as are herein imposed upon cigars.

Section 2804, Revised Statutes of the United States, as amended by section 26, of the tariff act of August 27, 1894 (28 Stat., 509, 552), and continued in force by section 34 of the Dingley Act (30 Stat., 151, 213), provides as follows:

> No cigars shall be imported unless the same are packed in boxes of not more than five hundred cigars in each box; and no entry of any imported cigars shall be allowed of less quantity than three thousand in a single package; and all cigars on importation shall be placed in a public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected and a stamp affixt to each box indicating such inspection, and also a serial number to be recorded in the custom-house. And the Secretary of the Treasury is hereby authorized to provide the requisite stamps and to make all necessary regulations for carrying the above provisions of law into effect.

The Secretary of the Treasury has made a regulation, by virtue of the power given him in the section last quoted, as follows:

> Each person is entitled to bring in fifty cigars or three hundred cigarettes for his own use. All cigars and cigarettes in excess of this number and less than three thousand are liable to seizure, but in meritorious cases may be released by the payment of a fine equal to the duty and the internal-revenue tax.

The above were all the material provisions of our tariff laws in force when this case arose upon the following facts:

September 30, 1903, Pearcy, the plaintiff in error and below, brought to the port of New York from the Isle of Pines 40 boxes of cigars, the product of and manufactured in said isle. (Rec. 3.)

The cigars were seized by Stranahan, the defendant in error, then the collector of the port of New York, on the ground that they did not constitute a legal package within the statute above referred to. (Rec. 3, 4.)

The plaintiff entered a formal protest, and thereafter brought a "complaint" in the Circuit Court of the United States for the Southern District of New York against the defendant to recover the value of the cigars. (Rec. 3.)

The basis of that complaint was that the Isle of Pines "is in the possession of and part of the United States" (Rec. 3); in other words, domestic territory, and therefore the provisions of law relative to articles "imported from foreign countries" had no application.

The only pleading filed for the defendant was a demurrer, upon the following grounds:

> The plaintiff's complaint herein does not state facts sufficient to constitute a cause of action against this defendant. (Rec. 5.)

Judgment, with no opinion of the court, was entered for the defendant (Rec. 6, 7), and this writ of error was brought. (Rec. 1, 2.)

Four assignments of error are made (Rec., 7), but they are purely formal. The substance of the plaintiff's case is that the Isle of Pines had ceased to be "foreign country" when he brought his cigars to the port of New York.

But before indicating our position and discussing that question we shall direct attention to a preliminary question of pleading, which we are confident, however, the plaintiff will not desire to raise.

PRELIMINARY QUESTION OF PLEADING.

The plaintiff has alleged that the Isle of Pines "is in the possession of and part of the United States." If that allegation be admitted by the demurrer, we shall be obliged to pray for permission to file an answer denying it, for, if it stands, one of the so-called insular cases is conclusive against us.

In *De Lima* v. *Bidwell*, 182 U. S., 1, this court had occasion to consider whether, after we had taken possession of Porto Rico under the treaty of peace between the United States and Spain, ratified April 11, 1899, articles brought from Porto Rico to the United States were liable to duty under the Dingley Act imposing duties upon articles "imported from foreign countries." And it was held that, because Porto Rico had been ceded and possession taken, the Dingley Act did not apply, and therefore that the duties had been wrongfully levied.

In *Downes* v. *Bidwell*, 182 U. S., 244, it was held to be within the power of Congress to impose duties upon articles brought from territory—Porto Rico—ceded to us by treaty, of which we have taken possession, but which has not been incorporated into the United States. However, in the case under discussion, there is no tariff act subsequent to the Dingley Act which applies. Therefore, if we can not dispute the allegation that the Isle of Pines is "in the possession of and part of the United States" the *De Lima* case will be controlling.

We claim the right to dispute the truth of the allegation for the following reasons:

So much of it as alleges that the Isle of Pines is a "part of the United States" is obviously a conclusion of law and not a well-pleaded averment of fact, which a demurrer admits. The court knows judicially that the Isle of Pines, before the treaty of peace with Spain, was not a part of the United States, and that if it has become a part of this country it must be by virtue of some article in that treaty. To allege, therefore, that the Isle of Pines is a part of the United States is merely to suggest to the court the proper construction of the treaty—a question of law.

Moreover, this court takes judicial cognizance whether or not a given territory be within the boundaries of the United States.

Jones v. *United States*, 137 U. S., 202, 214, where,

by reason of the action of the President, the island of Navassa, in the Caribbean Sea, was considered to be a part of the United States.

Foster v. *Neilson*, 2 Peters, 253, where the question presented was whether the United States or Spain, after the cession of Louisiana by France, owned the disputed territory between the Perdido and Iberville rivers; and the court followed the determination of the political departments, asserting title in the United States.

So, also, in *State* v. *Dunwell*, 3 Rhode Island, 127, 128, where a conviction for taking oysters from the Seekonk River, a fishery of the State, was sustained because "the State has always claimed jurisdiction up to and 'along the easterly side or bank' of the Seekonk River, and exercised it in fact. The courts are bound to take cognizance of the boundaries in fact claimed by the State."

Therefore, it must be beyond the competence of the parties by their pleadings to control the court, for it could not perform its functions of taking judicial cognizance, whether or not a given territory be part of the United States, if a demurrer be held to admit such an allegation.

This is shown very clearly by the case of *Taylor* v. *Barclay*, 2 Simons, 213. That was a bill for discovery, a material allegation being that the "Federal Republic of Central America" had been recognized by the British Government. Upon demurrer it was argued that this allegation was con-

fessed, but the court held otherwise, made inquiry at the foreign office, ascertained that the allegation was untrue, and decided the case upon the truth. And Vice-Chancellor Shadwell said (p. 221):

> Inasmuch as I conceive it is the duty of the judge in every court to take notice of public matters which affect the government of this country, I conceive that, notwithstanding there is this averment in the bill, I am bound to take the fact as it really exists, not as it is averred to be.

In *Jones* v. *United States*, 137 U. S., 202, 215, the rule in *Taylor* v. *Barclay* was approved.

Besides, this court has announced that it is its duty in considering treaties, to follow the American construction of them.

> *Foster* v. *Neilson*, 2 Pet., 253.
> *United States* v. *Arredondo*, 6 Pet., 691.
> *Garcia* v. *Lee*, 12 Pet., 511.

It would be absurd, therefore, if, as we shall endeavor to show hereafter, the political departments have determined that the Isle of Pines is in the possession of and is a part of Cuba, to contend that the demurrer can admit the contrary.

It is well settled, therefore, that one of the exceptions to the rule that a demurrer admits facts well pleaded is that no allegation is admitted which the court judicially knows to be untrue.

One reason for this rule has already been suggested, that the parties can not control the court in the exercise of its functions, one of which is to

take judicial cognizance of the public acts of the legislative and executive departments.

Another reason is that when a party pleads "that which is historically false, and which the judges are bound to take notice of as being false," it is not a well-pleaded averment within the rule.

> *Taylor* v. *Barclay*, 2 Sim. 223, quoted and approved in *Jones* v. *United States*, 137 U. S., 215.

And other reasons may be suggested. If the pleadings disclose an averment judicially known to be false, the court clearly will not base its decision upon it, for that would be to make knowingly an erroneous decision. And there is no good reason why the parties should be required to join on an issue of fact which the court must ultimately decide itself, and which it knows to be incapable of proof.

To illustrate by applying this reasoning to the averment in this case. And at the outset we concede that the question of possession is the purest kind of a question of fact. However, as we shall show hereafter, it can be determined by public acts, of which judicial notice will be taken, that the United States has never taken possession of the Isle of Pines, and that Cuba has been in possession, claiming title since May, 1902, when the United States withdrew from the island of Cuba. Now, these facts being known to the court—in theory known before the plaintiff brought this action—how can it be held that the

demurrer admits that which is known to be false? If an answer, and not a demurrer, had been filed, there would have been no evidence for the jury, for all the facts upon which this case depends are public in character, judicially known to the court.

In addition to the cases referred to above the following are pertinent:

Lincoln v. *United States*, 197 U. S., 417, where several suits to recover duties on merchandise shipped from New York to Manila were considered together. One of them was decided upon demurrer to an answer filed by the United States, which set up, in effect, that Manila was in our possession solely by force of arms as a part of hostile territory. It was considered that this allegation was not confest.

It is true that the point was not discust by the court, but the opinion notes the fact of the demurrer, and the plaintiff's brief directed attention to it. It can not be said, therefore, to have been past over without notice.

Southern Pacific Railroad Company v. *Groeck*, 68 Fed. Rep., 609.

This was a bill to establish title and compel a reconveyance. Upon demurrer the court judicially noticed certain acts of the Secretary of the Interior, contradicting material allegations, and decided the case upon the true facts thus ascertained.

That this exception to the general rule—if, indeed, it be proper to call it an exception—was recognized in the days when the rules of pleading

were unbending and strictly enforced, (see, *Cole* v. *Maunder*, 2 Rolle's Abridgment, 548, decided in 1635, wherein it was said that a demurrer would not confess an allegation that stones were thrown *molliter et molli manu*).

We shall feel at liberty, therefore, notwithstanding the demurrer, to contradict the allegation that the Isle of Pines is a part of and in the possession of the United States, by reference to public acts which this court will notice judicially.

Later on we shall argue that the plaintiff can not prevail in this case because a political question is involved which this court is incompetent to decide.

Of course, the parties can not compel the court to decide questions beyond its competence.

THE GOVERNMENT'S POSITION.

1. We shall show that this case presents for consideration a question of boundaries, which is nonjudicial in its nature, to be settled by the political departments; that the extreme view of the action of the proper departments that can be taken in favor of the plaintiff is that they have reached no determination, and, therefore, this court can not decide this case, there being no political action for it to follow.

2. Assuming that it can be held that the political departments have determined that the Isle of Pines is a part of the United States, we shall claim that this court is without jurisdiction because the po-

litical departments have appointed an exclusive mode in which the dispute shall be settled: by a future treaty, in accordance with the terms of the so-called Platt amendment, assented to by Cuba and later embodied in the stipulations of a treaty between the United States and the Republic of Cuba.

3. Our main contention will be that the Isle of Pines constituted an integral part of Cuba, that sovereignty over the Isle of Pines was relinquished merely, and that it is not included in the phrase "other islands now under Spanish sovereignty in the West Indies," in the following articles of the treaty of peace between the United States and Spain, ratified April 11, 1899:

ARTICLE I.

> Spain relinquishes all claim of sovereignty over and title to Cuba.
>
> And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

ARTICLE II.

> Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West

> Indies, and the island of Guam, in the Marianas or Ladrones. (30 Stat., 1754–1755.)

These articles of the treaty were founded upon Articles I and II of the peace protocol of August 12, 1898, entered into between the United States and Spain, which provided:

> "ARTICLE I. Spain will relinquish all claim of sovereignty over and title to Cuba.
>
> "ART. II. Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones, to be selected by the United States." (30 Stat., 1742.)

Altho this position disparages our title, we feel compelled to take it because it is the attitude of the Executive Departments, and for other reasons, which will become apparent hereafter in the argument.

If we succeed in showing that sovereignty over and title to the Isle of Pines were relinquished merely under Article I, we shall rely on the case of *Neely* v. *Henkel*, 180 U. S., 109, as conclusive that it always has been, and was, "foreign country" when the plaintiff brought his cigars to New York, September 30, 1903. Furthermore, we shall show that the Republic of Cuba was then in existence as an independent nation, exercising full powers of government in the Isle of Pines.

The question in the *Neely* case was, whether Cuba was a foreign country or foreign territory

within the act of Congress of June 6, 1900, chap. 793 (31 Stat., 656), providing for the extradition from the United States of persons committing certain crimes within any foreign country or foreign territory, or any part thereof, occupied or under the control of the United States. Held, that Cuba came within this description.

The reasoning of that case is conclusive that the Isle of Pines was "foreign country" within the Dingley Act, if it was included in the term "Cuba" in the treaty.

It was said (pp. 119, 120):

> The facts above detailed make it clear that within the meaning of the act of June 6, 1900, Cuba is foreign territory. It can not be regarded, in any constitutional, legal, or international sense a part of the territory of the United States.
>
> While by the act of April 25, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several States, to such extent as was necessary to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States, but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the Government by the joint resolution of April 20,

1898, expressly disclaimed any purpose to exercise sovereignty, jurisdiction, or control over Cuba "except for the pacification thereof," and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view, and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain.

Cuba is none the less foreign territory, within the meaning of the act of Congress, because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own affairs without interference by other nations. The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba.

It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the Treaty of Paris, was to be treated as if it were conquered territory. But

as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba to whom it rightfully belongs and to whose exclusive control it will be surrendered when a stable government shall have been estabilised by their voluntary action.

4. Our last proposition will be that, conceding that the Isle of Pines was ceded to the United States by the treaty, as we have never taken possession of it, and as the Republic of Cuba has exercised full powers of sovereignty over it since May 20, 1902, it has not ceased to be "foreign country," within the Dingley Act.

ARGUMENT.

I.

Whether the Isle of Pines be included within the boundaries of the United States is a political question, which can not be decided by this court, being nonjudicial in its nature.

The question in this case resolves itself into a question of boundaries within the principle$ of the following cases:

Foster v. *Neilson*, 2 Pet., 253.
Garcia v. *Lee*, 12 Pet., 511.
United States v. *Arredondo*, 6 Pet., 691.

In each of those cases the question presented for consideration was, whether or not, after the treaty between the United States and France ceding Louisiana a portion of that territory, in the possession of Spain and claimed by that country, had past to the United States.

This question was regarded as a boundary question, and the court ascertained and followed the determination of the political departments of the United States, which had decided that the disputed part belonged to the United States.

In *Foster* v. *Neilson*, 2 Pet., 253, it was said, by Mr. Chief Justice Marshall (p. 307):

> However this may be, it is, we think, incontestable that the American construction of the article, if not entirely free from question, is supported by arguments of great strength, which can not be easily confuted. In a controversy between two nations concerning national boundary, it is scarcely possible that the courts of either should refuse to abide by the measures adopted by its own government. There being no common tribunal to decide between them, each determines for itself on its own rights, and if they can not adjust their differences peaceably the right remains with the strongest. The judiciary is not that department of the government to which the assertion of its interests against foreign powers is confided; and its duty commonly is to decide upon individual rights according to those principles which the political departments of the nation have established. If the course of the nation has been a plain one, its courts would hesitate to pronounce it erroneous. We think, then, however individual judges might construe the treaty of St. Ildefonso, it is the providence of the court to conform its decisions

> to the will of the legislature, if that will has been clearly exprest.

In *Garcia* v. *Lee*, 12 Pet., 511, Mr. Chief Justice Taney, referring to *Foster* v. *Neilson*, said (p. 516):

> This court then decided that the question of boundary between the United States and Spain was a question for the political departments of the Government; that the legislative and executive branches having decided the question, the courts of the United States were bound to regard the boundary determined on by them as the true one.

In *United States* v. *Arredondo*, 6 Pet., 691, the court said, referring to *Foster* v. *Neilson* (p. 711):

> This court did not deem the settlement of boundaries a judicial but a political question—that it was not its duty *to lead, but to follow* the action of the other departments of the Government.

Those cases are indicative, therefore, of the further proposition that political questions, being nonjudicial in their nature, are not to be decided by the courts. This inference necessarily follows from the manner in which the cases were treated. The true construction of the treaties is not sought except for the purpose of showing the reasonableness of the American construction adopted by the political departments.

And in *Jones* v. *United States*, 137 U. S., 202, where a question arose whether or not Navassa

Island were a place within the jurisdiction of the United States, the court followed the determination of the President, who was authorized by the Congress to consider any island not within the jurisdiction of any other Government, upon which a deposit of guano had been discovered by a citizen of the United States, as appertaining to this nation. It was said (p. 212):

> Who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government. This principle has always been upheld by this court, and has been affirmed under a great variety of circumstances.

A number of cases are cited, among them *Foster* v. *Neilson* and *Garcia* v. *Lee*, *ub. sup.*

It is well settled that the courts of the United States are scrupulous to exercise no power not clearly judicial in its nature.

Hayburn's case, 2 Dallas, 409.
United States v. *Ferreira*, 13 How., 40.
United States v. *Yale Todd*, 13 How., 52 (note).
Gordon v. *United States*, 117 U. S., 697.

There being a clear distinction between political and judicial questions, it follows that when a case

arises which involves a determination of a political question, the court can not decide the case unless there has been action by the political departments. If no determination has been reached, the court is powerless. If the question has been settled, the court will follow it.

Hereafter, under the third point of our argument, we shall set out fully all legislative and Executive action. We shall urge that those departments have determined that the Isle of Pines is not within the boundaries of the United States, but appertains and of right belongs to Cuba. However, conceding that it may be considered that we have prest that conclusion too far, we submit that it can not be successfully urged that the political departments have determined that the Isle of Pines belongs to the United States. The utmost that can be said is that there is no American construction of the treaty of peace—no determination of the boundary question. As the court can not decide it, it follows that the plaintiff must fail, for the foundation of his case rests upon a political question undetermined by the proper departments of the Government.

II.

If it be considered that the title to the Isle of Pines has been determined by the political departments to be in the United States, the fact that the question of ownership by mutual agreement between the United States and the Republic of Cuba is to be settled by arbitration, the adjudication to take the form of a treaty, excludes this court from its jurisdiction to decide the question of title in this case.

While this court, as a general rule, will decide questions of individual rights, founded upon a treaty, by ascertaining and following the determination of the political departments upon political questions, still, if those departments, charged with the settlement of our relations with foreign powers, have directed that political questions be settled in a certain manner, that determination is conclusive on the courts.

It is well settled that, even to determine questions judicial in their nature, special tribunals may be erected, their decisions to be final and conclusive on the courts.

> *United States* v. *Ferreira*, 13 How., 40.
> *Murray* v. *Hoboken, etc., Co.*, 18 How., 280.
> *Bates & Guild Co.* v. *Payne*, 194 U. S., 109.
> *United States* v. *Ju Toy*, 198 U. S., 253.

A fortiori, therefore, may the political departments direct that a controversy with a foreign power shall be settled in a certain way.

The so-called Platt amendment attached to the Army appropriation act of March 2, 1901 (31 Stat., 897) provided, in part:

> VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

That provision was assented to by being incorporated into the Cuban constitution, and was reenforced by being embodied in the treaty with Cuba, signed May 22, 1903 (33 Stat., 2248, 2252), which provided:

> ARTICLE VI.
>
> The island of Pines shall be omitted from the boundaries of Cuba specified in the constitution, the title thereto being left to future adjustment by treaty.

The manner, therefore, in which the dispute over the Isle of Pines, if any there be, should be settled had been agreed upon long before September, 1903, when the plaintiff brought his cigars to the port of New York, and the courts will not act in advance of a determination in the way agreed upon.

III.

The Isle of Pines was not ceded to the United States by the treaty of peace, Article II, but was included within the term "Cuba" in Article I.

The demonstration of this proposition requires merely that the true interpretation of the treaty be shown. This court will put itself in the position of the Government when the treaty was

proposed and ratified, and will avail itself of all the light which the President had when he made the treaty and which the Senate had when it was ratified.

The rule is well stated with reference to the construction of statutes—and it equally applies in the construction of treaties—as follows:

> In endeavoring to ascertain what the Congress of 1862 intended, we must, as far as possible, place ourselves in the light that Congress enjoyed, look at things as they appeared to it, and discover its purpose from the language used in connection with the attending circumstances.
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> *Platt* v. *Union Pacific R. R. Co.*, 99 U. S., 48, 64.
>
> See also, *Smith* v. *Townsend*, 148 U. S., 490, 494.
>
> *United States* v. *Laws*, 163 U. S., 258.
>
> *Church of the Holy Trinity* v. *United States*, 143 U. S., 457.

Besides, this court has announced that it will follow that interpretation which the political departments have put upon treaties.

> *Foster* v. *Neilson*, 2 Pet., 253, 307, 309.
> *Cherokee Nation* v. *Georgia*, 5 Pet., 1, 46.
> *United States* v. *Arredondo*, 6 Pet., 691, 711.
> *Garcia* v. *Lee*, 12 Pet., 511.

With these canons to guide us, we shall proceed to show the situation at the time the treaty was

made and ratified, and the interpretation which the political departments have given to it.

(a) *The Isle of Pines, by a well-settled principle of international law, a part of Cuba.*

In Hall's International Law, edition of 1895, pages 129, 130, is the following:

> Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water and either form a line more or less parallel with land or compose systems of their own, in both cases inclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case, on the south coast of Cuba the Archipelago de los Canarios stretches from sixty to eighty miles from the mainland to La Isla de Pinos; its length from the Jardines Bank to Cape Frances is

> over a hundred miles. It is inclosed partly by some islands, mainly by banks, which are always awash, but upon which, as the tides are very slight, the depth of water is at no time sufficient to permit of navigation. Spaces along these banks, many miles in length, are unbroken by a single inlet; the water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait, twenty miles or so in width, but not more than six miles of channel intervene between two banks, which rise to within seven or eight feet from the surface, and which do not consequently admit of the passage of seagoing vessels. In cases of this sort the question whether the interior waters are, or are not, lakes inclosed within the territory, must always depend upon the depth upon the banks and the width of the entrances. Each must be judged upon its own merits. But in the instance cited there can be little doubt that the whole Archipelago de los Canarios is a mere salt-water lake and that the boundary of the land of Cuba runs along the exterior edge of the banks.

This work was the standard English authority on international law when the treaty of peace was made in 1898.

The same paragraph is to be found in the last (fifth) edition at page 124.

(b) *We intervened in aid of the Cuban revolutionists from the highest motives of humanity, and not to wage a war of conquest.*

On April 20, 1898, the Congress of the United States adopted the following joint resolution (30 Stat. L., 738):

> Whereas the abhorrent conditions which have existed for more than three years in the island of Cuba, so near our own borders, have shocked the moral sense of the people of the United States, have been a disgrace to Christian civilization, culminating, as they have, in the destruction of a United States battle ship with two hundred and sixty-six of its officers and crew, while on a friendly visit in the harbor of Habana, and can no longer be endured, as has been set forth by the President of the United States in his message to Congress of April eleventh, eighteen hundred and ninety-eight, upon which the action of Congress was invited: Therefore,
>
> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled.* First. That the people of the island of Cuba are, and of right ought to be, free and independent.
>
> Second. That it is the duty of the United States to demand, and the Government of the United States does hereby demand, that the Government of Spain at once relinquish its authority and government in the island of Cuba and withdraw its land and naval forces from Cuba and Cuban waters.
>
> Third. That the President of the United States be, and he hereby is, directed and

empowered to use the entire land and naval forces of the United States, and to call into the actual service of the United States the militia of the several States to such extent as may be necessary to carry these resolutions into effect.

Fourth. *That the United States hereby disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof, and asserts its determination, when that is accomplished, to leave the government and control of the island to its people.*

The language of the fourth clause of the above joint resolution of April 20, 1898, is the key to unlock every difficulty. The intention is plain and unmistakable.

It is the declaration of a purpose to turn over to Cuba all the integral parts of Cuba. We have never made claim to any of the thousands of islets and keys surrounding Cuba, and it is to be supposed that no claim would be made to the Isle of Pines if it was shown to be upon the same footing. And in expounding the treaty, therefore, and our subsequent course of conduct we are never to forget the purpose of the Congress, declared in said joint resolution.

Great weight was given to it in the opinion in the *Neely* case, cited *ante*, page 13.

(c) *The term "Cuba," historically and politically, includes the Isle of Pines.*

This is shown by the following record of official acts of the Spanish Government, which, from 1774

to 1898, treated the Isle of Pines as included in the political division known as Cuba, just as the island of Nantucket is included in the Commonwealth of Massachusetts.

They are found in convenient form in a pamphlet, entitled "The Isle of Pines and the Political Term 'Cuba,'" prepared by direction of and lodged in the State Department by the Cuban minister and printed at the end of this brief as Appendix A.

1. First Official Census of Cuba, 1774.

This census, taken by order of and under the direction of the Captain-General of Cuba, includes the Isle of Pines, population, 78. (Appendix A, pp. 64, 65.)

2. Statistical Plan of the Ever Faithful Island of Cuba for the Year 1827.

This plan was prepared by order of the Captain and Governor-General of Cuba by a committee of the chiefs of the several departments and printed at His Majesty's printing office, Habana, 1829.

It includes the Isle of Pines: "Area of the Isle of Pines, 865½ square miles. General area of the mainland and islands, 32,807½ square miles."

Under the heading "Isle of Pines" is found much information about its climate and resources, and the fact is brought out that the governor-general of Cuba had given considerable thought to this island, and had made a proposal to the King, who had established, by royal order of August 1, 1828, a colony on the island called La

Reina Amalia, and designed its fortifications and defense. It is stated also that the Isle of Pines belongs to the same jurisdiction as Cuba. (Appendix A, pp. 65, 67.)

The reasons for attaching the Isle of Pines more closely to Cuba appear in the—

3. "Historical Account of the Benefits Rendered the Royal Economical Society, etc., by His Excellency Don Francisco Dionisio Vives," the governor-general referred to in the "Statistical Plan." (Appendix A, p. 68.)

> 1832 (p. 29 et seq.). "The Isle of Pines, situated to the south of this island (Cuba), has always been a dangerous point and one frequently visited by the enemies of Spain. Its proximity and geographical position rendered its preservation important, and it could not be accounted as safe in the state of depopulation in which it was. General Vives could not ignore this without leaving in abandonment a point which would some day cause us great trouble, and thus he busied himself with the establishment of a colony."

4. "Census of the Population of Cuba in 1841." This census, taken by order of the Captain-General, includes the Isle of Pines: "Western department—Jurisdiction of Habana. Name of the districts. * * * 51. Isle of Pines. Males and females of all classes, 621." (Appendix A, p. 69.)

5. By royal order of August 19, 1855, the captain and governor general was directed to "make a

new division of the judicial districts of the island." Accordingly he ordered that the judicial district of Bejucal should include, besides several Cuban cities and towns, the Isle of Pines. (Appendix A, pp. 70, 71.)

6. The general budgets of receipts and expenses in the island of Cuba for the years 1857–58, 1895–96 include the Isle of Pines. (Appendix A, pp. 71, 72, 79, 80.)

7. In the census of Cuba for 1861, for 1877, and for 1887 the Isle of Pines is treated as a part of Cuba. (Appendix A, pp. 73, 76; Census of Cuba, p. 179.)

8. By Royal decree of June 9, 1878, the island of Cuba was divided into six provinces for the administration of civil affairs, and the Isle of Pines was included in the province of Habana. (Appendix A, pp. 73–76.)

9. In 1879, 1890, 1898 the inhabitants of the Isle of Pines voted for deputies to represent Cuba in the Spanish Cortes. (Appendix A, pp. 77, 78, 79, 80.)

If the foregoing record does not show that the specific designation "Isle of Pines," which is as much the name of an ayuntamiento, or municipal district, as of an island (Census of Cuba, 1899, prepared by the War Department, p. 20), was not in the political sense a part of the specific designation "Cuba," at the time the treaty of peace was made and ratified, it is difficult to imagine what more would be necessary.

The instance of the island of Nantucket occurs. Her inhabitants vote for Massachusetts Represen-

tatives to the Congress; they form a part of Massachusetts's administrative and judicial districts. So did the inhabitants of the Isle of Pines vote for Cuban deputies to the Cortes and form a part of the administrative and judicial districts of Cuba. They are included in the Cuban census, the receipts and expenditures of the isle are included in the Cuban budget, they are governed by the captain-general of Cuba, and the isle forms a municipal district, or ayuntamiento, of the province of Habana.

These facts were accessible, undoubtedly, to the President when the peace protocol of August 12, 1898 (30 Stat., 1742), was signed. It must be presumed that they were known then, and at the date of the ratification of the treaty, April 11, 1899. Our declared purpose contained in the joint resolution of April 20, 1898 (ante, p. 28), made it the duty of the President and the Senate to know them. Besides, many of them had been known to the Government before November, 1898.

As a handbook, primarily for the use of military officers, the War Department published in June, 1898, "Military Notes on Cuba." It was revised in November, 1898, and from the later edition it appears that the status of the Isle of Pines was well known. Thruout that publication the Isle of Pines is considered as an integral part of Cuba.

One division treats of the Province of Habana, its judicial districts, townships, cities, and towns, and it is stated that the Isle of Pines is an *ayunta-*

miento, or township, in the judicial district of Bejucal, in said Province of Habana. (Military Notes on Cuba, p. 249.)

An extended description of each *ayuntamiento* is given, that of the Isle of Pines occupying several pages. (Ib., pp. 257-262.)

And in treating the geographical, topographical, agricultural, and other facts about Cuba, the Isle of Pines is constantly considered as a part of Cuba. (Ib., pp. 17, 199, 200, 203–207.)

At the time this manual was prepared maps were made by the War Department. Two of them are filed with this brief. They show the Isle of Pines as a part of the province of Habana.

It can not be doubted, therefore, that long before the treaty of peace was signed, December 10, 1898, and was ratified, April 11, 1899 (30 Stat., 1754), the President and the Senate and all the world knew that the Isle of Pines was an integral part of Cuba.

In view of the pledge contained in the joint resolution of April 20, 1898 (*ante*, p. 24), in the light of which the treaty must be construed, it appears that the Isle of Pines was not one of the "other islands" ceded by Article II to the United States.

The chief purpose of that treaty was to sweep the power of Spain from the West Indies. That purpose must have been growing from the time war was declared until it was accomplished by the treaty. To accomplish it, it was wise not to be

specific, but to use general language, for some place over which Spain was sovereign might have been overlooked and our object defeated. Hence the broad provision of the second article of the treaty.

A difficulty has been felt, however, with reference to the words "other islands," and it has perplexed some to assign a meaning to them. In view of the purpose which we had in making the treaty, this is scarcely necessary. The idea was to receive a cession of Porto Rico and other islands, if any, not constituting an integral part of Cuba, which was not ceded.

However, these words may be applied to the following islands, which were under Spanish sovereignty:

1. Vieques Island, 13 miles east of Porto Rico, containing 195 square miles;

2. Culebra Island, 25 miles northeast of Porto Rico, containing 9 square miles;

3. Mona Island, 42 miles west of Porto Rico, containing about 16 square miles.

(See S. Doc. No. 205, p. 9.)

Another difficulty has been exprest, based upon the fact that the Isle of Pines has a name of its own and was not called Cuba. For reasons of convenience, islands, like cities and towns, generally have names of their own. Most of the keys and islets, too, about Cuba have distinct designations, like Cayo Romano, Cayo Coco, and Jardines del

Rey, yet no one suggests that they past to us under Article II of the treaty of peace.

We consider now that we have shown that the treaty of peace can not be construed by itself, without reference to the subsequent action of the political departments, as ceding the Isle of Pines to the United States. It was a part of Cuba, over which sovereignty was relinquished.

We pass on to detail the various acts of the political departments.

(d) *The action of the political departments.* 1. *Acts during our military occupation of Cuba, showing that the Isle of Pines was treated as a part of Cuba.*

January 1, 1899, the Spanish evacuated Habana, the sovereignty of Spain withdrew from Cuba, and the government of the island was transferred to a military governor as the representative of the President of the United States.

See "The Establishment of Free Government in Cuba," compiled in the Bureau of Insular Affairs from the records of the War Department. (S. Doc. No. 312, 58th Cong., 2d sess., p. 6, filed with this brief.)

> The occupation of the island by the United States being established, it was necessary to enter upon the work of creating and establishing a stable government administered by the Cuban people, * * *.
>
> The first step was to ascertain the population of the several provinces of the island,

> the educational and other qualifications for participating in the elective franchise, and secure other data essential to fixing the representation and right of exercising the privilege of voting. This was accomplished by means of the Cuban census. (Sen. Doc. No. 312, p. 7.)

THE CENSUS OF CUBA.

(A "Report on the Census of Cuba, 1899," was published in 1900 by the War Department, office director census of Cuba. From it the following facts and statements are taken:)

This census was ordered by the President August 17, 1899, as a first step toward assisting "the people of Cuba" to establish "an effective system of self-government." (Census of Cuba, pp. 10, 11.)

In taking the census the first requisite was the delineation of the enumeration districts; and accordingly the island was divided into 1,607 districts, a list of which is given in the census of Cuba, page 668 *et seq.* And at page 674 it appears that three enumerators took the census of the Isle of Pines, which is designated as a municipal district, of the judicial district of Bejucal, in the Province of Habana.

The following extracts from this publication are of importance:

> The Government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines, lying directly to the south of it, and more than a thou-

sand islets and reefs scattered along its northern and southern coasts. (p. 17.)

The Isle of Pines, with an area of 840 square miles, is a municipal district of the province of Habana. It is in effect two islands, connected by a marsh, the northern being somewhat broken by hills, the southern low, flat, and sandy (p. 20).

The total population of Cuba, including the Isle of Pines and the neighboring keys, was, on October 16, 1899, 1,572,797 (p. 72).

Further evidence that the War Department in taking the census of Cuba considered the Isle of Pines as a part thereof, is contained in the "Population tables."

See Census of Cuba, pp. 179, 182, 191, 194, 200, 203, 218, 225, 232–235, 299, 358, 406–413, 507, 512, 515, 517, 520, 553, 674, 698, as follows:

HABANA PROVINCE.

Municipal district.	1887.	1899.
Aguacate	3,346	3,163
Habana	200,448	242,055
Isla de Pinos	2,040	3,199

Population by wards and by cities.—Under province of Habana: Isla de Pinos district, 3,199 (p. 182).

Rural population, excluding cities of 8,000 inhabitants or more, with area and density, by municipal districts.—Under province of Habana: Isla de Pinos, rural population, 3,199; area in square miles, 840; density per square mile, 3.8 (p 192).

Sex, general nativity, and color.—Under province of Habana: Isla de Pinos, total, 3,199; male, 1,782; female, 1,417. Native white: Total, 2,480; male, 1,309; female, 1,171. Foreign white: Total, 198; male, 186; female, 13 (p. 194).

Percentage of population by sex, general nativity, and color.—Under province of Habana: Isla de Pinos, total population, 3,199; male, 55.7; female, 47.8; native white, 77.5; foreign white, 22.4; colored, 28.6 (p. 200).

Age and sex.—Under province of Habana: Isla de Pinos, total population, 3,199; under 5 years, male 195, female 158; 5 to 17 years, male 547, female 528; 18 to 20 years, male 106, female 97; 21 to 44 years, male 671, female 473; 45 years and over, male 263, female 161 (p. 203).

Birthplace.—Under province of Habana: Isla de Pinos, total population, 3,199; Cuba, 2,990; Spain, 195; other countries, 14 (p. 218).

Birthplace, sex, and race.—Under province of Habana: Isla de Pinos district, total, 3,199; Cuban, 2,818; Spanish, 32; in suspense, 334; other citizenship, 15 (p. 225).

Conjugal condition.—Under Province of Habana: Isla de Pinos, total, 3,119; single, 2,184; married, 774; living together as husband and wife by mutual consent, 56; widowed, 184; unknown, 1 (p 299).

School attendance, literary and superior education.—Under Province of Habana: Isla de Pinos, total population, 3,199; attended school, 38; did not attend school, 784 under

10 years of age. Ten years of age and over: Attended school, 37; can neither read nor write, 1,343; can read but can not write, 42; can read and write, 954; not stated, 1. Superior education: Yes, 22; no, 3,177 (p. 358).

Foreign whites, male and female.—Under Province of Habana: Isla de Pinos, total, 185. Male—52, agriculture, fisheries, and mining; 48, trade and transportation; 12, manufactures and mechanical industries; 2, professional service; 60, domestic and personal service; 11, without gainful occupation; 13 females—1, trade; 1, professional; 1, domestic and personal service; 10 without gainful occupation (p. 410).

Colored.—Total, 288; 96 agriculture, 13 trade, 15 manufacturing, 90 domestic and personal, 74 without gainful occupation (p. 412).

Province of Habana, colored females.—Isla de Pinos, total, 233; domestic and personal service, 28; without gainful occupation, 205 (p. 413).

Number and size of families.—Under Province of Habana: Isla de Pinos, total population, 3,199; total number of families, 572; average size, 5.6 (p. 507).

Dwellings and families.—Under Province of Habana: Isla de Pinos, unoccupied buildings, 48; occupied dwellings, 546; number of families, 572; persons to a family, 5.6; persons to a dwelling, 5.9; families to a dwelling, 1 (p. 512).

All the maps therein are exprest to be "maps of Cuba," yet they all include the Isle of Pines.

See Census of Cuba, pp. 18, 72, 74, 76, 80, 96, 98, 100, 114, 118, 132, 152.

The first act of the United States, therefore, in contemplation of its purpose to withdraw from Cuba at the earliest practical moment, recognized that the Isle of Pines constituted an integral part of Cuba.

April 18, 1900, an election law was promulgated for the regulation and control of proposed municipal elections.

> June 16, 1900, an election was held thruout the island in which the people of Cuba in all the municipalities, which include the entire island, elected all their municipal officers. (S. Doc. No. 312, p. 7.)

From that statement it would appear that the inhabitants of the Isle of Pines, a municipal district, as we have seen, participated in the election of June 16, 1900.

This is stated as a fact in Senate Document No. 205, Fifty-ninth Congress, first session, report from Committee on Foreign Relations, filed with this brief, page 7.

It is denied in the minority report of Senators Morgan and Clark. (S. Doc. No. 205, p. 215.)

Their reasoning, however, seems quite inconclusive. It is true that in the order of April 18, 1900, the municipalities of the island (Cuba) are not enumerated, but in view of an order previously

issued, appointing officers for the municipality of the Isle of Pines, it is altogether probable that the municipality was included and that it held an election under the order. (S. Doc. No. 205, p. 44.)

The Military Governor had appointed a mayor and first assistant mayor of the Isle of Pines in August, 1899. (Ib., p. 44.) He was Military Governor of Cuba, and had no authority to appoint to office in the Isle of Pines, unless it were a part of Cuba.

Besides, General Wood has stated (S. Doc. No. 205, p. 187) that "under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor."

As shown hereafter the inhabitants of the Isle of Pines participated in the elections of September 15, 1900, and December 31, 1901, and it is not to be doubted that they chose municipal officers in the election of June 16, 1900.

Soon after the municipal election an order was made enlarging the powers of the municipal governments and putting into their hands as much of the government as was practicable. When the new municipal governments were under way July 25, 1900, a call for a constitutional convention was issued, which begins by reciting our pledge of the fourth article of the joint resolution of April 20, 1898 (ante, p. 24), and referring to the establishment of municipal governments. (S. Doc. No. 312, pp. 7–8.)

The inhabitants of the Isle of Pines participated in this election, held September 15, 1900, thereby assisting in the choice of delegates to perform the high duty of forming a constitution. (S. Doc. No. 205, p. 7).

Order No. 218, by General Wood, dated October 14, 1901, approved by the War Department, and published by the Division of Insular Affairs in November, 1901, under the head of "Electoral divisions, Province of Habana:"

PROVINCE OF HABANA.

> It is divided into four circuits. * * * The third will be composed of the ayuntamientos of Guines, La Catalina, Madruga, Melena del Sur, Nueva Paz, San Nicolas, Guara, Bejucal, Batabano, Quivican, *Isle of Pines*, San Antonio de las Vegas, San Felipe, and La Salud. (S. Doc. No. 205, p. 7.)

By October 1, 1901, the Cuban Constitutional Convention had concluded its work, and on December 31, 1901, an election was held to choose governors of provinces, provincial councillors, members of the house of representatives, and presidential and senatorial electors. (S. Doc. No. 312, p. 12.)

And the inhabitants of the Isle of Pines participated in this election, for it was held under said order No. 218, of October 14, 1901. (S. Doc. No. 312, p. 17.)

February 24, 1902, the electors met, chose senators, and elected Tomas Estrada Palma to be

President, and Luis Esteves Romero to be Vice-President. (S. Doc. No. 312, p. 17.)

On May 20, 1902, the Cuban Congress was to meet to receive the transfer of the government. As this time drew near, General Wood, the military governor, on May 10 and 14, requested to be instructed what was to be done about the Isle of Pines. (S. Doc. No. 205, p. 103.)

By telegram of May 16, 1902, he was instructed:

> It is understood by the United States that the present government of the Isle of Pines will continue as a de facto government, pending the settlement of the title of said island by treaty pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1901.
>
> ROOT, *Secretary of War.*

(Ib., p. 103.)

On May 20, 1902, the Military Governor wrote to "The President and Congress of the Republic of Cuba," in part as follows:

> Under the direction of the President of the United States, I now transfer to you * * * the government and control of the island, to be held and exercised by you, under the provisions of the constitution of the Republic of Cuba heretofore adopted by the constitutional convention and this day promulgated, and I hereby declare the occupation of Cuba by the United States and the military government of the island to be ended. * * * It is understood by the United States that the present government

> of the Isle of Pines will continue as a de facto government, pending the settlement of the title to said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1902. (S. Doc. No. 312, p. 17.)

(The true date of the act of Congress referred to is March 2, 1901.)

On the same day President Palma replied:

> *It is understood that the Isle of Pines is to continue de facto under the jurisdiction of the Government of the Republic of Cuba*, subject to such treaty as may be entered into between the Government of the United States and that of the Cuban Republic, as provided for in the Cuban constitution and in the act passed by the Congress of the United States, and approved on the 2d of March, 1901. (S. Doc. No. 312, p. 19.)

In the minority report to the Senate Report (S. Doc. No. 205) it appears that it has been thought that General Wood misunderstood Secretary Root's telegram, it being considered that the words "the present government of the Isle of Pines" referred to our military government. (S. Doc. No. 205, p. 217.)

This is an error, however, and General Wood did not misunderstand, as is shown by the facts that the distinct statement in President Palma's letter was not excepted to, that the Cubans have ever since governed the Isle of Pines, and that the Congress has acquiesced by taking no action. The

Cubans have established schools thereon, courts and government have been instituted, and a tariff levied upon American goods imported in the Isle of Pines. (S. Doc. No. 205, pp. 168, 176, 177, 182, 183, and 185.)

As we have shown, it was the policy of our Government to permit the Cubans a large measure of self-government while we were in military possession of Cuba, to school them to govern themselves.

In *Neely* v. *Henkel* (180 U. S., 109, 117, 118), the proclamation of General Brooke and various orders are set out which show conclusively that the civil administration of the island of Cuba was carried on by the Cubans, under direction of the military authority of the United States.

At the date of the transfer of government to Cuba, May 20, 1902, the Isle of Pines was actually being governed by the Cubans. The inhabitants of the Isle of Pines had elected municipal officers in June, 1900, and on December 31, 1901, they had helped to choose a governor of the Cuban Province of Habana, within which the Isle of Pines was included, councilors of said Province, members of the Cuban house of representatives, and presidential and senatorial electors.

On February 16, 1903, the Senate, by resolution, requested the President "to inform the Senate as to the present status of the Isle of Pines, and what government is exercising authority and control in said island."

In reply thereto the President submitted a report from the Secretary of War, Mr. Root. (See S. Doc. No. 201, 57th Cong., 2d sess., reprinted in S. Doc. No. 205, pp. 186, 187.)

In that report is the following:

> The nature of the de facto government under which the Isle of Pines was thus left pending the determination of the title thereof by treaty is shown in the following indorsement upon a copy of the said resolution by the late military governor of Cuba:
>
> [First indorsement.]
>
> OFFICE OF LATE MILITARY
> GOVERNMENT OF CUBA,
> *Washington, February 20, 1903.*
>
> Respectfully returned to the Bureau of Insular Affairs. At the date of transfer of the island of Cuba to its duly elected officials the Isle of Pines constituted a municipality included within the municipalities of the province of Habana and located in the judicial district of Bejucal. The government of the island is vested in its municipal officers, subject to the general control of the civil governor of the province of Habana, who is vested under the constitution of Cuba with certain authority in the control of municipal affairs. Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the Governor-General. The Isle of Pines, as it had existed

under the military government, was transferred as a de facto government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War. The government of the island to-day is in the hands of its municipal officers, duly elected by the people under the general control of the civil governor of the province of Habana and the Republic of Cuba. As I understand it, the government of the Isle of Pines is vested in the Republic of Cuba, pending such final action as may be taken by the United States and Cuba looking to the ultimate disposition of the island. No special action was taken to protect the interests of the citizens of the United States who have purchased property and have settled in the Isle of Pines, for the reason that no such action was necessary. All Americans in the island are living under exactly the same conditions as other foreigners, and if they comply with the laws in force it is safe to say that they will not have any difficulty or need special protection. At the time these people purchased property they understood distinctly that the question of ownership of the Isle of Pines was one pending settlement, and in locating there they took the risks incident to the situation.

This indorsement by General Wood also answers the question of the resolution

regarding the protection of interests of citizens of the United States so far as this Department is able to furnish information thereon.

ELIHU ROOT,
Secretary of War.

It is quite apparent, therefore, that Secretary Root, in his telegram of May 16, 1902, used the words "present government" with reference to the Cuban Government.

But whatever may have been the meaning intended by the telegram of May 16, 1902, the construction put upon it by General Wood has been acquiesced in, and it is too late to urge that it was erroneous.

We see, therefore, that the conduct of the President's representatives in Cuba during the military occupation thereof was consistent thruout, and that the Isle of Pines was always treated as an integral part of Cuba.

OTHER EXECUTIVE ACTION.

In August, 1902, the Treasury Department decided that duties should be assessed on goods coming from the Isle of Pines at the same rates as similar merchandise imported from other places; and that is the rule to-day. (See Letter from the files of the Treasury Department, Appendix "B," p. 84.)

The attitude of the Executive is made more emphatic by the terms of the first treaty with Cuba,

signed July 2, 1903, over two months before the plaintiff brought his cigars here, by which the United States relinquished its claim to the Isle of Pines in favor of the Republic of Cuba.

This treaty was favorably reported to the Senate by the Committee on Foreign Relations, but considerable opposition having developed, it was recommitted, and not acted upon before the time for its ratification expired, February 2, 1904. (S. Doc. No. 205, p. 170.)

Another treaty was signed on March 2, 1904, relinquishing "all claim of title to the Isle of Pines * * * which has been or may be made in virtue of Articles I and II of the treaty of peace between the United States and Spain, signed at Paris on the tenth day of December, eighteen hundred and ninety-eight."

Article II of this treaty asserted that our relinquishment of claim of title was in consideration of grants of coaling stations to the United States by the Republic of Cuba. (S. Doc. No. 205, p. 170.)

However, it would seem that this consideration was named mainly for the purpose of winning over the opposition that had developed against the first treaty, rather than from any belief on the part of the Executive that we had a good claim of title to the Isle of Pines.

See the following letter, to be found in Senate Document No. 205, page 11:

DEPARTMENT OF STATE,
Washington, November 27, 1905.

DEAR SIR: I have received your letter of October 25, in which you say: "Kindly advise me at your very earliest convenience the necessary procedure to establish a territorial form of government for the Isle of Pines, West Indies, U. S. A."

It is no part of the duty of the Secretary of State to give advice upon such subjects. I think it proper, however, to answer your inquiry so far as it may be necessary to remove an error under which you appear to rest concerning the status of the Isle of Pines and your rights as residents of that island.

There is no procedure by which you and your associates can lawfully establish a territorial government in that island. The island is lawfully subject to the control and government of the Republic of Cuba, and you and your associates are bound to render obedience to the laws of that country so long as you remain on the island. If you fail in that obedience, you will be justly liable to prosecution in the Cuban courts and to such punishment as may be provided by the laws of Cuba for such offenses as you commit. You are not likely to have any greater power in the future. The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. *In my judgment the United States has no substantial claim to the Isle of Pines. The treaty merely accords to*

Cuba what is hers in accordance with international law and justice.

At the time of the treaty of peace which ended the war between the United States and Spain, the Isle of Pines was and had been for several centuries a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation. Nor would the rejection of the pending treaty put an end to the control of Cuba over the island. A treaty directly contrary to the one now pending would be necessary to do that, and there is not the slightest prospect of such a treaty being made. You may be quite sure that Cuba will never consent to give up the Isle of Pines and that the United States will never try to compel her to give it up against her will.

Very respectfully,

ELIHU ROOT.

CHARLES RAYNARD, Esq.,
President of American Club
of the Isle of Pines, West Indies.

Besides, the seventh clause of the Platt amendment, assented to by Cuba, by incorporation in its constitution and by treaty stipulation, provided:

That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its

> own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations at certain specified points, to be agreed upon with the President of the United States. (31 Stat., 897; 33 Stat., 2248, 2252).

In a letter of August 14, 1899, John J. Pershing, Assistant Adjutant-General, writing by direction of the Assistant Secretary of War, advised a Mr. George Bridges, interested in timber lands, "that this island (the Isle of Pines) was ceded by Spain to the United States, and is therefore a part of our territory, altho it is attached at present to the division of Cuba for governmental purposes." (S. Doc. No. 205, p. 40.)

Of similar import are letters of January 13, 1900, January 15, 1900, and February 16, 1900, signed by G. D. Meiklejohn, Assistant Secretary of War. (S. Doc. No. 205, pp. 41, 42, 45, 46.)

Of course the Assistant Secretary had no power to bind this Government to a course of action, and probably the letters were written hastily, upon a very superficial examination of the question of the ownership of the Isle of Pines. He certainly soon began to have doubts about the propriety of his conduct, for in April, 1900, he refers the matter to the Attorney-General. (S. Doc. No. 205, p. 45.)

Afterwards the request for the Attorney-General's opinion was withdrawn, "because the matter was for diplomatic consideration rather than a

question for the decision of his Department." (S. Doc. No. 205, p. 43.)

About this time, apparently, the matter came to the attention of Mr. Root, the Secretary of War, for in March, 1900, the Assistant Secretary of War directed the following form of answer:

> The determination of the territorial limits of this country does not appertain to the Department, and that the Isle of Pines is subject to the jurisdiction of the military forces of the United States now in charge of civil affairs in the Island of Cuba. (S. Doc. No. 205, p. 47.)

August 17, 1900, the same form of answer was used by direction of the Secretary of War. (Ib., p. 44.)

And the same form was used down to the passage of the act of March 2, 1901, containing the so-called Platt amendment. (Ib., pp. 52, 54.)

Thereafter inquiries are simply referred to the sixth clause thereof, quoted above page 21, without comment. (Ib., pp. 55, 56, 58, 59, 60, 61, 62, 73.)

Large cession maps of the United States were issued in 1899, 1902, 1903, and 1904. Upon those of 1899 and 1902 the Isle of Pines appears as an inset map. Upon those of 1903 and 1904 it is omitted, and in its place was inserted a map of the Panama Canal and adjacent territory. (S. Doc. No. 205, p. 17.)

The insertion of the Isle of Pines was at variance

with the Executive attitude at the time, and two letters, set out in Senate Document No. 205, pages 16–17, show that neither in the Interior Department nor in the War Department is there any record of any authoritative instruction to place the Isle of Pines upon the maps.

This action in any event, however, is no more important than the Assistant Secretary of War's letters, for, certainly since May, 1902, the Executive has consistently acted upon a determination that the United States has no substantial, rightful claim to the Isle of Pines.

LEGISLATIVE ACTION.

The only positive legislative action has been the passage of the so-called Platt amendment, since embodied in a treaty, as shown above. (31 Stat., 897.)

It provided:

> *Provided further*, That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled "For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the President is hereby authorized to "leave

> the government and control of the island of Cuba to its people" so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:

Then follow eight clauses, the sixth as follows:

> VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty.

It has been asserted that the above provision annulled any right that the Republic of Cuba had to the Isle of Pines under the treaty.

> If the claim of Cuba had been good and valid in law or morals, Congress had the right, as a condition of its legislative act conferring sovereignty upon or a protectorate over the people of Cuba, to limit the government so created to the geographical limits of the Island of Cuba and thereby to annul any possible claim or right of the Republic of Cuba to the Isle of Pines. This is the legal effect of the Platt amendment.

(See Minority Report, S. Doc. No. 205, p. 200.)

However, it is to be observed that the minority report, in setting out the Platt amendment, omit the important preamble, as it may be called, wherein reference is made to the joint resolution of April 20, 1898. (See S. Doc. No. 205, p. 190.)

In that joint resolution, set out in full (*ante*,

p. 24), we denied in the most emphatic terms "any disposition or intention to exercise sovereignty, jurisdiction, or control over said island except for the pacification thereof."

In the light of that positive promise we view the sixth clause of the Platt amendment not as asserting that we have a valid claim of title to the Isle of Pines, but as suggesting that each Government, our own and that of Cuba, look into the status of the Isle at leisure.

Some American citizens were making claim that the Isle belonged to us, and upon a consideration of the text of the treaty alone we had a superficial claim. It was suggested, therefore, that the matter be settled in the only practical way—by treaty—after each country had made full investigation of its rights.

The following letter by the author of the Platt amendment sustains this view:

> SENATE OF THE UNITED STATES,
> COMMITTEE ON RELATIONS WITH CUBA,
> *Washington, Conn., November 5, 1902.*
>
> J. C. LENNEY, Esq., *New York.*
>
> MY DEAR SIR: I have your favor of the 3d instant. I can not answer it at great length.
>
> I think it is a very fair question as to whether the cession of "Porto Rico and other islands" embraces the Isle of Pines. I have always maintained that it did, altho I recognized the force of the other contention. There are a great many islands adja-

cent to Cuba which it is acknowledged go with Cuba. The Isle of Pines is larger than any of the others and situated farther from Cuban shores, and I have never been able to see what other island or islands the treaty referred to, *but the Cuban people have claimed that it was always within the administrative jurisdiction of Cuba and belonged to Cuba the same as other adjacent islands; consequently, when preparing the amendment to the army bill, which has come to be known as the "Platt amendment," I inserted a clause to the effect that the title should be subject of treaty negotiations. I feel that it is of the utmost importance that it shall be ours.* It will give us the most advantageous point from which to defend the entrance of the Isthmian Canal. *I supposed, when I provided that it should be the subject of treaty negotiation, that unless we could satisfy the Cuban Government that it passed to us in cession, that it would come to us by purchase, and that is still my belief. But for the present, with the consent of this Government, I think it is in the possession of Cuba, with its title still undetermined and awaiting the making of the treaty,* the negotiations of which seem to proceed very slowly. Some people seem to think that Cuba will not make the treaty which it agreed to in accepting the provisions of the amendment. I do not entertain any such doubt, but like all diplomatic proceedings, it will probably take time and more time than may be agreeable. * * *

Yours truly,

O. H. PLATT.

(S. Doc. No. 205, p. 249.)

Cuba had included the Isle of Pines within its constitutional boundaries. (S. Doc. No. 205, p. 19.) This Government said: Omit it, for the present; the title will be adjusted in the future by treaty. Now, in good faith, after repeated declarations that we only intervened in Cuban affairs for the pacification of the island, not for conquest, no more could have been intended than to adjust the title to the Isle of Pines in conformity with the truth. If it had been intended to assert that the treaty of peace ceded the Isle of Pines to us, clear language of that import would have been employed. The language of the Platt amendment is not assertive of title. If it had provided merely that "the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba," the argument that a claim of title had been asserted would be very strong. The following clause, however, that the title be left to future adjustment by treaty, is an admission that the Cuban claim is recognized, at least, as substantial—worthy to occupy the time of the President and the Senate in negotiation and settlement.

The Platt amendment, therefore, can not be regarded as a statute, subsequent to a treaty, asserting the proper construction of the prior treaty. It leaves the treaty to be interpreted in the light of the circumstances existing when it was made. It was enacted because Cuba had included the Isle of Pines within her boundaries, and any claim that

the United States might have would have been foreclosed had we assented to the Cuban constitution in its original form. It was intended to give to us an opportunity to urge a claim of title if it should be found that we had a valid claim.

The most significant legislative action is non-action. We have permitted the Republic of Cuba to govern the Isle of Pines, and our minister to Cuba has urged the Cuban Government to various acts with reference to the Isle of Pines. He has induced the Cuban Government to promise not to transfer a leper hospital there, to give the isle a port of entry, to send three judges, to appoint an English-speaking teacher to teach in the Cuban schools, and to establish courts of records, so that deeds could be filed on the isle. (S. Doc. No. 205, pp. 177, 181, 182, 183, 184, 185.)

That we had withdrawn from the Isle of Pines, and that the Republic of Cuba has been governing it since May 20, 1902, must have come to the attention of Congress at an early date. It has certainly been known since February 28, 1903, when the President responded to the Senate resolution of February 16, 1903, by announcing that the Isle of Pines had been governed by the Republic of Cuba since May 20, 1902. That answer was printed as a Senate document (see S. Doc. No. 201, reprinted; S. Doc. No. 205, pp. 186, 187) and made public, and therefore, it must be presumed, became known to the House.

It was well-known that Cuba was levying a tariff upon American goods shipped from the United States to the Isle of Pines. (See Appendix B, pp. 83–86.)

With full knowledge of these facts, the Congress has taken no action and has tacitly admitted that Cuba's claim of title is superior to our claim.

The most extreme view that can fairly be taken of the attitude of the legislature is, that it is content that the claim of the United States to the Isle of Pines shall rest upon the proper construction of the treaty of peace with Spain.

The Executive is committed to the position that the United States have no valid claim of title; and it seems to us that the Legislature has not believed that our Government has a real, substantial claim. We suggest, therefore, that the court should follow the view of the political department and declare that the Isle of Pines is not territory of the United States.

However, if it be thought that the action of the political departments be not sufficiently definite, we submit that we have shown that the term "Cuba," in Article I of the treaty of peace, must have been intended to include the Isle of Pines.

IV.

Conceding, for the purposes of argument only, that the Isle of Pines was ceded to the United States by the treaty of peace, as we have never taken possession of the island, and as it has been and is being governed by the Republic of Cuba, it has not ceased to be "foreign country" within the Dingley Act.

We have shown, above, under the third division of our argument, that Spain, after the treaty of peace, withdrew from all her possessions in the West Indies; and that we entered into military possession of Cuba for the purpose of pacifying the island and of educating the Cubans to govern themselves; that we took no possession of the Isle of Pines as separate from Cuba, but treated it as being under the military governor of Cuba; that when we withdrew from Cuba we withdrew from the Isle of Pines and permitted the Republic of Cuba to exercise sovereignty over the Isle of Pines as a de facto government; and that that state of affairs has existed from May 20, 1902, the date when we withdrew from Cuba and the Isle of Pines, down to the present time.

We have never taken possession of the Isle of Pines as a part of the United States, and have never attempted to exercise any powers of government over the island. The Republic of Cuba is in possession claiming title, and exercising de facto the powers of government.

It is immaterial to inquire whether Cuba is rightfully or wrongfully in control; that is, whether

the War Department was authorized to permit Cuba to govern the Isle of Pines. Cuba is, in fact, in possession and exercising the powers of government, and that situation brings this case, even upon the supposition that the Isle of Pines was ceded to the United States, within the principle of the following cases:

De Lima v. *Bidwell*, 182 U. S., 1.

This case was concerned with the question whether Porto Rico, after the treaty of peace, passed out of the designation "foreign country" in the Dingley Act.

Mr. Justice Brown, several times in the course of his opinion, emphasizes the point that Porto Rico had ceased to be "foreign country," not simply because it was ceded to the United States by the treaty, but also because possession had been taken.

Mr. Justice Brown said (p. 180):

> The *status* of Porto Rico was this: The island had been for some months under military occupation by the United States, as a conquered country, when, by the second article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the island of Porto Rico, *which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which*

had been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser, who had accepted the deed, gone into possession, paid taxes, and made improvements without let or hindrance from his vendor. But it is earnestly insisted by the Government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that, while the island may be to a certain extent domestic territory, it still remains a "foreign country" under the tariff laws until Congress has embraced it within the general revenue system.

After referring to various decisions and the practise of the Government in regard to the application of the tariff laws to ceded territory, he said (p. 194):

> From this *résumé* of the decisions of this court, the instructions of the Executive Departments, and the above act of Congress, it is evident that from 1803, the date of Mr. Gallatin's letter, to the present time there is not a shred of authority, except the dictum in *Fleming* v. *Page* (practically overruled in *Cross* v. *Harrison*), for holding that a district ceded to and in the possession of the United States remains for any purpose

> a foreign country. Both these conditions must exist to produce a change of nationality for revenue purposes. Possession is not alone sufficient, as was held in *Fleming* v. *Page;* nor is a treaty ceding such territory sufficient without a surrender of possession. (*Keene* v. *McDonough*, 8 Pet., 308; *Pollard Heirs* v. *Kibbe*, 14 Pet., 353, 406; *Hallett* v. *Hunt*, 7 Ala., 882, 899; *The Fama*, 5 Ch. Rob., 97.)

The cases cited in the above extract, altho they were not concerned with the application of tariff acts, in other respects show a situation similar to that in the case under discussion.

Keene v. *McDonough*, 8 Pet., 308.

This case was concerned with the title to premises situated in Louisiana. The defendant relied upon the title of one Don Miguel Mahier, his predecessor in title, obtained by an adjudication of a Spanish tribunal, made after the cession to the United States, but before actual possession taken by the United States.

It was said (p. 310):

> The adjudication having been made by a Spanish tribunal, after the cession of the country to the United States, does not make it void; for we know, historically, that the actual possession of the territory was not surrendered until some time after these proceedings took place. It was the judgment, therefore, of a competent Spanish tribunal, having jurisdiction of the case, and rendered whilst the country, altho ceded,

> was *de facto* in the possession of Spain and subject to Spanish laws. Such judgments, so far as they affect private rights of the parties thereto, must be deemed valid.

Pollard's heirs v. *Kibbe*, 14 Pet., 353.

This, also, was a case where a grant by Spanish authority, after the treaty ceding Louisiana, but while Spain, owing to a boundary dispute with the United States, was in possession, was sustained. Here, an act of Congress recognized the validity of the grant.

Hallett v. *Hunt*, 7 Ala., 882, was a similar case.

In *The Fama*, 5 Ch. Rob., 107 (erroneously printed 5 Ch. Rob., 97, in the report of *De Lima* v. *Bidwell*, *supra*), the question was involved and discust by Sir W. Scott, "how far full sovereignty can be held to have past by the mere words of the treaty without actual delivery."

After referring to the universal rule, in all systems of jurisprudence, that to consummate the right of property a person must unite the thing with the possession, the learned judge says (page 115):

> This is the general law of property, and applies, I conceive, no less to the right of territory than to other rights.

In the case under discussion, Spain, by our admission, for the sake of the argument only, ceded the Isle of Pines to the United States and surrendered all her possession, but Cuba is in possession, claiming title and exercising the powers of government.

Now, as it is stated in *De Lima* v. *Bidwell*, *ub. sup.*, under such circumstances there has been no change of nationality for revenue purposes.

The mere fact of a cession is not enough to make foreign territory domestic. The cession gives a right to possession, but before the foreign territory can become domestic to this right must be added the possession itself.

This view considers a treaty of cession as like a conveyance of property at the common law, by which the grantee is not regarded as having a complete title until to his *jus in rem* he has united the *jus in re*.

(See *The Fama*, 5 Ch. Rob., 107, 115.)

If, therefore, when a treaty of cession is made, the ceded territory, or a part thereof, is occupied by an adverse claimant, who continues after the cession to administer his laws, the cession does not become complete, and the territory does not become domestic until it has been reduced to possession.

The Cubans, so far as they could, not being an independent government, claimed title to the Isle of Pines before we withdrew from Cuba, for they included it within the boundaries of Cuba, and, see also (S. Doc. No. 205, pp. 43, 44, letter of Secretary of State and Government for Cuba, dated August 10, 1900); and since our withdrawal they have remained in possession, claiming title and governing the island. Therefore, altho it be

considered that the Isle of Pines was ceded to the United States by Article II of the treaty of peace, yet it has not ceased to be "foreign country," because the United States has never taken possession under the treaty.

Finally, we refer to the case of *United States* v. *Rice*, 4 Wheat., 246. That was an action upon a bond for duties levied by the United States upon goods brought into Castine, then in the district of Maine, during its temporary occupation by the British troops in the war of 1812. It was held that the action would not lie, the duties having been imposed wrongfully, because the military occupation of the port enabled the enemy to exercise the powers of sovereignty to the exclusion of the United States. Castine, therefore, was regarded as a foreign port at the time the bond was taken.

So, in the case under discussion, the Isle of Pines must be regarded as foreign, because we have not that firm possession in fact which is essential to constitute a given territory domestic.

The judgment of the Circuit Court should be affirmed.

Respectfully submitted.

CHARLES J. BONAPARTE,
Attorney-General.

HENRY M. HOYT,
Solicitor-General.

OTIS J. CARLTON,
Special Assistant to the Attorney-General.

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Appendix A.

THE ISLE OF PINES AND THE POLITICAL TERM "CUBA."

The political division of the Spanish Kingdom called "Cuba" included both the island which had the specific designation "Cuba" and the island which had the specific designation "Isle of Pines," as also the hundreds of adjacent islets and keys, each of which had its specific designation, like Cayo Romano, Cayo Coco, and Jardines del Rey.

This is evidenced by a long series of statutes, royal decrees, orders, and dispositions of the Spanish Parliament and Throne in which authority and jurisdiction were expressly conferred upon the Government of Cuba over the Isle of Pines, and by the unvaried practice during four centuries of treating the Isle of Pines as a part of Cuba.

It was in that light that the Spanish commissioners approached the peace negotiations at Paris in 1898, and in that sense that they used the term "Cuba" in the protocols and in the treaty of peace.

The following royal orders, decrees and dispositions, statutes, reports, etc., taken at random, some given in full, others partly, translated from the Spanish, conclusively bear out that contention:

FIRST OFFICIAL CENSUS OF CUBA, 1774.

1774. This census, taken in 1774 by order of and under the direction of the Marquis de la Torre,

Captain-General of Cuba, included the Isle of Pines, as will be seen from the following extract:

Habana	75,618	Remedios	3,085
Guanabacoa	7,998	Matanzas	3,249
S. M. de Rosario	2,898	Nueva Filipina	2,617
San Felipe	2,132	Stgo de Cuba	19,384
Stgo de las Veg	1,809	Pto. Principe	13,332
Jarnco	536	Bayamo	12,250
Sancti Spiritus	8,265	Holguin	2,440
Santa Clara	8,103	Baracoa	2,222
Trinidad	5,614	Isla de Pinos	78

"STATISTICAL PLAN OF THE EVER FAITHFUL ISLAND OF CUBA FOR THE YEAR 1827."

1827. By order of, and under the direction of His Excellency Don Francisco Dionisio Vives, Captain and Governor General of Cuba, the above plan was prepared by a committee of chiefs of the several departments and printed at His Majesty's printing office, Havana, 1829, and the following is taken from a historical summary which precedes it:

> Nothing further was done in regard to this island until the 4th day of April, 1494, on which day Columbus sailed from the port of the Isabela in Santo Domingo with the idea of exploring it, which he did along the southern coast until he came upon the Isle of Pines, which he named Evangelista. * * *

Area of the Isle of Pines, 865½ square miles. General area of the mainland and islands, 32,807½ square miles.

Batabano, with an auxiliary church of the parish of Quivican, situated 4,395 yds. to the north of the landing upon the southern coast. * * *

"ISLE OF PINES."

> Belonging to the same jurisdiction, it lies between 21° 59′ 53″ and 21° 25′ 20″ latitude

and 76° 2′ and 10″ and 76° 47′ and 10″ longitude; its shape is angular, its greatest length from east to west being over 18 provincial leagues, and the greatest width 15; it has 76 leagues of coast, mostly unapproachable on account of the reefs which surround it and submerged shrubbery which covers them; it is divided into two portions—north and south—almost separated by a swampy belt, which crosses it from east to west, and called Cienega by its inhabitants, and formed by the deposits of several rivers which empty into it. Its northern portion faces on Cuba, and its area is estimated at 63 square leagues; its surface is higher than that of the former, and has peaks of quite an altitude and conical in shape, called la Canada, Daguila, Sierra Caballos, Sierra de Casas, and others, almost all isolated, distributed according to a certain economic order, alike wonderful and picturesque, from which rise many rivers which traverse all the plains portion; in it are scattered 24 cattle ranches; the land is fertile and mountainous, presenting Nature in its most vivid colors, its plains covered with pines or palms. The southern portion is almost uninhabited by man or beast, its lands most rocky and covered with timber of every kind."

This island abounds in meats, birds and fish in its rivers and coasts, including tortoise shell; in its woods are to be found many medicinal shrubs and others of excellent barks and leaves for tanning, principally the malpighia; marble, jasper, and other mineral stones; in the few experiments which have been made, its soil has given proof of the advantageous production of all kinds of colonial fruits, and a tobacco of as good a quality as that of Vuelta Abajo.

Its atmosphere and waters are so benefi-

cent that they have restored to health several persons afflicted with chronic diseases classed as incurables; of the second there are many with mineral properties—it is favored with a clear atmosphere, and the climatic changes are less sudden than those of Cuba.

The principal port is called Frances in the southern part with a capacity for large vessels; on the north there are only the mouths of the following rivers: Sierra de Casas, las Nuevas, and Santa Fé for coasting trade; the last the most frequented, being the shipping point for cattle. Since its discovery its population has not exceeded 100 persons of all classes dedicated to cattle grazing and fishing.

His excellency, the present captain-general, perceiving its importance for the aforesaid reasons, its proximity to Cuba and the advantage to its wealth and development which its settlement would give, proposed it in the like manner to His Majesty (R. I. P.), who by Royal order of August 1, 1828, saw fit to establish a colony called La Reina Amalia, disposing in regard to its population, what is exprest in the matter in the Royal warrant of October 21, 1817, issued for like purpose as the former; and also designing its fortification and defense. Since that date the beneficent designs of the Government, and well-founded hopes have materialized and to-day its progress is marked by the establishment of a town to be the capital of said colony, situated on the shores of the River Casas, and called Nueva Gerona; which contains 17 houses, military barracks, a prison ward, hospital and temporary warehouse, a doctor, a surgeon, two mixt stores, a blacksmith shop, a retail grocery, and a bakery.

The colony has a church dependent on Quivican, military commander, a justice of the peace, a minister of the Royal treasury, a maritime subdelegate, a parish, a detachment of soldiers, a battery protecting the harbor and capital, and a small warship for purposes of communication.

Present population: 130 whites, 30 free negroes, 39 slaves; total, 199—besides the garrison and convicts.

"HISTORICAL ACCOUNT OF THE BENEFITS RENDERED THE ROYAL ECONOMICAL SOCIETY; THE HOUSE OF BENEFICENCE AND OTHER BRANCHES OF SAID INSTITUTION BY HIS EXCELLENCY DON FRANCISCO DIONISIO VIVES."

Prepared by the joint committees of both corporations.

HABANA.

H. M. printing office for the government and captain generalcy, the Royal treasury and the Royal Patriotic Society.

1832 (page 29 et seq.):

The Isle of Pines, situated to the south of this island, has always been a dangerous point and one frequently visited by the enemies of Spain. Its proximity and geographical position rendered its preservation important and it could not be accounted as safe in the state of depopulation in which it was. General Vives could not ignore this without leaving in abandonment a point which would some day cause us great trouble, and thus he busied himself with the establishment of a colony. He acquired the lands of an estate at a moderate price and a half league of land with 98 caballerias made by donations for that purpose made by several individuals, all of which have been distributed at an annual rental and in small parcels for every kind of

cultivation and especially that of the tobacco plant whose leaves it produces of a superior quality. He has garrisoned it with troops, destined a prison thereat, and named a military commander. It begins its development with a barracks already constructed, as also a hospital, forty houses, grocery stores, blacksmith and carpenter shops, and a minister of the Royal treasury assigned to it. This new colony, called Reina Amalia, and its capital, Nueva Gerona, will figure before long in the list of towns, and many families theretofore in want will owe to its illustrious founder a life of comfort, it being worthy of note that His Excellency in this undertaking has not caused the State any extra expenses beyond that of the insignificant one connected with the purchase of an estate and the wages of a carpenter, all other means employed having been obtained without expense to anyone.

The half league and the sixty caballerias were donated by the Messrs. Acosta brothers, residents of Bejucal, one of these gentlemen being the author of the valuable history of his town, published amongst the documents for the history of the Island of Cuba.

"CENSUS OF THE POPULATION OF CUBA IN 1841."

1841. This census, which was taken by order of and under the direction of the Captain-General, includes the Isle of Pines, as will be seen from the following extract:

Western Department.—Jurisdiction of Habana.

Name of the districts—

---

51. Isle of Pines.—Males and females of all classes, 621.

"ROYAL ORDER OF AUGUST 19, 1855."

1855. By dispositions first and second of the Royal order of August 19, 1855, the Captain and Governor General of Cuba was directed to make a new division of the judicial districts of the Island, and in obedience thereto he issued the following order on December 15th:

"OFFICE OF THE SECRETARY OF GOVERNMENT."

"DIVISION OF THE ISLAND INTO JUDICIAL DISTRICTS, ACCORDING TO ROYAL ORDER OF AUGUST 19."

In fulfillment of dispositions First and Second of the Royal Order of August last, the Island of Cuba is divided into the following judicial districts:

Bejucal.

1. Bauta. 2. The city of Bejucal. 3. Batabano. 4. Cano. 5. Guatao. 6. Isle of Pines. 11. Wajay.

Havana, December 15th, 1855.

JOSE DE LA CONCHA.

And then to prevent any possible misunderstanding the following notice was issued the same day, expressing the changes which had been made in the former districts:

"OFFICE OF THE SECRETARY OF GOVERNMENT."

"EXPRESSING THE CHANGES MADE IN THE OLD DISTRICTS BY THE NEW JUDICIAL DIVISION."

1855. "For the better understanding of the new judicial division of the island,

following are exprest the changes which have been made in the old districts:

. . . . . .

. . . . . .

Bejucal: To it is incorporated the whole of the former jurisdictions of Santiago and the Isle of Pines.

Havana, December 15th, 1855.

JOSE DE LA CONCHA.

"GUIDE OF THE EMPLOYEE OF THE DEPARTMENT OF FINANCE."

1858. This work written by Don Leandro Garcia Gragitena, an employee in the Department of Finance, was approved by the Superior Government of Cuba. It was long regarded as a standard.

At page 8 he says:

> The province of Habana or Western Department is divided into twenty jurisdictions, which are at the same time, civil and military, as follows: Beginning at Cape San Antonio, New Filipina from said cape to the River Pan de Azucar along the North Coast and to the River San Diego along the South Coast; * * *
>
> *Isle of Pines of itself alone* forms the jurisdiction of La Reina Aamalia.

"GENERAL BUDGET OF SPAIN FOR 1857-58."

1858. In the general budget of Spain for that year the following extracts appear:

"GENERAL BUDGETS OF THE RECEIPTS AND EXPENDITURES OF THE STATE IN THE ISLAND OF CUBA."

> From the 1st of July, 1857, to the end of December, 1858, approved by His Majesty by royal order of July 7, 1858.

Habana.—Printing office of the governor and captain-general of H. M.—Teniente Rey street, No. 13.

1857.

General budget of receipts.

Section 1st, chapter 2d, article 3d. Receipts from the police department, Isle of Pines	$340
Section 2d, receipts from Government monopolies, Chapter I, Article I, Isle of Pines	1,500
Section 5th, property of the state. Income from annuities—Isle of Pines	420

EXPENDITURES.

Parish clergy.—Section 1st, chapter 5th, article 2d, parishes, Isle of Pines.

Priest	$531.44
Chief sexton	350.00
	881.44

NOTE.

The parish clergy were paid in accordance with the dispositions of the royal warrants of September 13, 1852, which, in accord with the Holy See, the Spanish Government promulgated.

Section 1st, chapter 6th, Article 2d.—Effects for the clergy.—Isle of Pines	$300
Section 2d, War.—Chapter 26, article 1.—Isle of Pines. Lights for the guardhouse and military barracks	144
Utensil	170

Section 3d.—Department of the treasury administrative personnel, office of superintendent general and under secretary.—Section 1st, chapter 1st.—Article 9th, depositories of the 6th class.

Isle of Pines:

Depository by royal order of October 6, 1853	$800
Clerk, second class.—Idem idem	409
	1,209

"CENSUS OF CUBA FOR THE YEAR 1861."

1861. From the foregoing census, taken by order of and under the direction of the captain and governor-general, the following is extracted:

Occidental department.	Total general population.		
	Males.	Females.	Total.
Bahia Honda	7,750	5,923	13,673
Bejucal	13,110	10,658	23,748
Cardenas	33,049	17,416	50,465
Cienfuegos	31,458	22,576	54,216
Colon	40,961	23,256	64,217
Guanabacoa	13,953	12,260	26,213
Guinajay	23,214	16,629	39,843
Guines	35,946	26,516	62,462
Habana	105,053	85,279	199,332
Jaruco	21,244	16,227	37,571
Matanzas	47,260	32,652	79,913
Nenvitas	3,925	2,451	6,376
Pinar del Rio	41,586	27,340	68,926
Puerto Principe	34,744	27,783	62,527
Remedios	26,277	20,970	47,247
Sagua la Grande	32,181	19,895	51,986
San Antonio	18,255	15,631	33,886
Santa Clara	28,230	24,414	52,644
San Cristobal	16,345	12,632	28,977
Santa Ma del Rosario	4,276	3,770	8,046
Santiago de Las Vegas	8,946	6,904	15,850
Sancti Spiritus	25,076	20,631	45,707
Trinidad	20,912	16,597	37,509
Isla de Pinos	1,326	741	2,067
Total department occidental	635,277	468,042	1,113,401

ROYAL DECREE OF JUNE NINTH, 1878.

1878. On June 9, 1878, a royal decree was issued dividing the island of Cuba into six provinces for the administration of civil affairs, which was transmitted to the captain-general of Cuba by the minister for the colonies, Señor Elduagen, as follows:

EXCELLENCY:

With this date H. M. has seen fit to issue the following royal decree:

After taking into consideration the reasons presented to me by the minister of the colonies and in accord with the council of ministers, I decree the following:

ARTICLE FIRST. For the government and administration of the island of Cuba, it is

hereby divided into six civil provinces, which will bear the names of their respective capitals and the following: Pinar del Rio, Habana, Matanzas, Santa Clara, Puerto Principe, and Santiago de Cuba.

ARTICLE SECOND. A province of the first class shall be Habana, of the second Santiago de Cuba, and of the third Pinar del Rio, Matanzas, Santa Clara, and Puerto Principe.

ARTICLE THIRD. *The dividing lines between these provinces shall be those fixt in the detailed description of the same, approved on this date;* but if a town situated at the extremity of a province should have a portion of its boundaries within the bordering province, the territory of said town shall belong wholly to the province in which the majority of its inhabitants and buildings shall be situated, even tho the dividing line shall appear to separate them.

ARTICLE FOURTH. The minister of the colonies shall dictate the necessary orders for the actual marking out upon the ground of the said boundaries of the provinces, so that in keeping with this division those corresponding to the municipal districts be rectified, and that there shall conform thereto also the different services of the State in the departments of finance, government, and public improvements.

ARTICLE FIFTH. The governor-general after hearing the president of the audencia of Habana, will draw up and submit for its superior approval a draft of the judicial division of the island in accord with that of the provinces which this decree established.

Given at the palace, June ninth, 1878. Alfonso. The minister of the colonies, José Elduagen.

All of which, by royal order, I commu-

nicate to you for your information and consequent effect.

God keep Your Excellency many years. *Madrid*, June 9, 1878.

J. ELDUAGEN.

To His Excellency, the Governor-General of Cuba.

No. 872.

HABANA, JUNE 9, 1878. EXECUTE H. M'S. COMMAND. (S) CAMPOS.

The "detailed description of the same approved on this date," to which article third of the preceding royal decree of June 9 refers, is the following, which was approved by His Majesty the same day.

"*DETAILED DESCRIPTION of the limits of the provinces into which the island of Cuba is divided, made upon the Geotopographical map of said island, published by Don Esteban Pichardo, under the patronage and direction of the captain-general.*"

BOUNDARY BETWEEN THE PROVINCES OF PINAR DEL RIO AND HABANA.

The dividing line begins on the north coast of the island at Point Guines to the west of the Ensenada de Porlier; continues toward the point called Garto, thereafter it passes between those called Banes and O'Farrill and thence by Alfonso, crosses the dividing lines of the waters between the north and south coast of the island, in Esperon; continues toward the south, passing near Ponce de Leon and Guayabal, which borders on the left, and by Zaldivar, Bachoni, and Pascual; crosses the railway from Habana to Guanajay to the right of Tumba-

Cuatro, and leaving on its left Ceiba del Agua, it continues near Bengochea to the Concepcion Desengano and Villena, crossing over the railway from Habana to Pinar del Rio between those two last points, and continues in a straight line to the south coast of the island, ending therein by los Banos de Guanimar.

NOTE.—The Isle of Pines is included in the province of Habana.

NOTE.—The islands and keys adjacent to the island belongs to the provinces upon which they respectively border.

Approved by His Majesty.

Madrid, June 9, 1878.

(S.) J. ELDUAGEN.

CENSUS OF CUBA FOR 1877.

1877. By order of and under the direction of the captain-general of Cuba, a census of the population was taken on December 31, 1877, of which the following is an extract:

Province, Habana. — "Ayuntamiento" (municipality); Isle of Pines. Number of sections, 5; certificates of registry, 349; actual population, 2,478; 1,614 males, 864 females.

RESIDENTS PRESENT.

	Males.	Females.
Spaniards	1,007	679
Foreigners	2	.....
Asiatics	46	.....
Colored	224	152

TRANSIENTS.

Spaniards	296	21
Foreigners	3	.....
Asiatics	36	12
Colored	.....	.....

RESIDENTS ABSENT.

	Males.	Females.
Spaniards	105	17
Foreigners	5	
Asiatics	76	5
Colored		

LEGAL POPULATION.

Total	1,465	853
Grand total	2,318	

The foregoing report of the census taken in 1877 was approved and declared official by His Majesty in 1883, as will be seen from the following:

ROYAL DECREE.

Upon hearing the reasons presented to me by the president of the council of ministers, in accord with the said council, I decree as follows:

ARTICLE 1.—The census of Spain is declared official, said census being the one taken according to the enrollment made the 31st of December, 1877, in the Peninsula, adjacent isles and possessions in the North of Africa by the department general of the Geographical and Statistical Institute, and in the islands of CUBA and Puerto Rico, Philippines, and Fernando Po by their respective governments general.

Given at the palace the eleventh of May, one thousand eight hundred and eighty-three.

ALFONSO.

The president of the council of ministers.

PRAXEDES MATEO SAGASTA.

In the elections of 1879 for deputies to represent Cuba in the Spanish Cortes, notice of the election districts was published by

the government general of the island, of which the following is an extract:

1879. "APPROVAL having been expressed by H. M. Government, by telegram of this date, the division of the island into electoral districts and the subdivision of these into sections, made in accordance with articles 2 and 4 of the new law of December 28th last, is hereby published for the purposes pursuant thereto:"

"SECOND DISTRICT."

"*Province of Havana.*"

"Free population, 383,850; number of Deputies, 8. Rate: 47,981.

Judicial districts. Sections. Free population. Total.

City of Bejucal, 6,717.

Bejucal.—Isle of Pines, 2,200.

Havana, February 1, 1879.

The Secretary of the Government General,

R. GALBIS.

1890. In December of 1890 a royal decree concerning the election of Deputies to represent Cuba in the Spanish Cortes, was issued, of which the following is an extract:

After hearing the reasons presented to me by the Minister of the Colonies,

ROYAL DECREE.

"In the name of my august son, the King Don Alfonso XIII and as Queen Regent of the Kingdom, on motion of the minister of the colonies, and in accord with the council of ministers, I decree the following:

"ARTICLE 1.—Until the publication of a

new electoral law, there will be in force in the island of Cuba the divisions into departments and districts for the election of deputies to the Cortes, approved by the said Cortes in the following form:

PROVINCE OF HABANA.

Population 451,928.—Number of deputies, 9; department of Habana, 6 deputies.

Habana	200,448
Marianao	7,352
Alquizar	8,314
Ceiba del Agua	3,232
Guira de Melena	8,721
San Antonio de los Banos	12,423
Bauta	8,070
Batabano	8,016
Bejucal	7,902
El Cano	3,745
Isla de Pinos	2,040
La Salud	4,896
Quivican	4,585
San Antonio de las Vegas	4,469
Santiago de las Vegas	12,081
San Felipe	2,313
Vereda Nueva	3,277
Total	301,884

ARTICLE 2.—The Government will give an account to the Cortes of the execution of this decree.

Given at the Palace the 18th of December, 1890.

MARIA CRISTINA.

The Ministers of the Colonies:
ANTONIO MARIA FABIE."

1896. The following are taken from the "general budget of income and expenditures on the Island of Cuba for 1895–96.

Section 2.—Grace and justice; chapter 5, article 2.—Isle of Pines; priest	$583
Assistant	350
	933

Section 5.—Navy; chapter 1, article 1.—Four naval ensigns, to be adjutants at Mantua, Mariel, Bahia Honda, and Isle of Pines, at $1,125	$4,500
Article 13.—Maritime guards, port service, Isle of Pines, one boat; one deputy coxwain	$264
Four sailors	864
	1,128
17 port boatswains, per districts; 3, Matanzas; 3 for Cardenas, etc., 1 for Isle of Pines, at $480	8,160
Section 5, chapter 2, article 1, for office expenses of the commandancies of Mantua, Mariel, Isle of Pines, and Bahia Honda, at $120	480
Section 5, department of government; political government; personnel.—Chapter 7, article 2.—Isle of Pines "commandante de armas" (military official) with the functions of a "capitan de partido" (an officer who exercised judicial and administrative powers)	600
Section 6, government; chapter 12, article 1.—Department of posts; offices of the fourth class; 30 for the post-offices at Madruga, *Nueva Gerona* (Isle Pines) *Santa Fé* (Isle of Pines), etc., at $300	9,000
Over sea carriers; one carrier between Habana and Isle of Pines	400

1898. For the election of deputies to represent Cuba in the Spanish Cortes in 1898, notice concerning the districts was published by the Government, of which the following is an extract:

"OFFICE OF THE GOVERNOR-GENERAL OF THE ISLAND OF CUBA. INSULAR BOARD OF THE ELECTORAL CENSUS. OFFICE OF THE SECRETARY."

It being directed by the fourth of the transitory dispositions of the royal decree of November 25, 1897, extending to this island the electoral law of June 25, 1890, that until a new division is made in the electoral districts for deputies to the Cortes in the territory of the Island of Cuba and Porto Rico, the division actually existing and in force shall be declared valid; this board, at a meeting held the 29th of January last, resolved, amongst other things, that there be published for due and general information,

the aforesaid electoral division by departments and districts, which is as follows:

"PROVINCE OF HABANA.

"Population, 451,928.—Number of deputies, 9; department of Habana, 6 deputies.

Habana	200,448
Marianao	7,352
Alquizar	8,314
Ceiba del Agua	3,232
Guira de Melena	8,721
San Antonio de los Banos	12,423
Bauta	8,070
Batabano	8,016
Bejucal	7,902
El Cano	3,745
Isla de Pinos	2,040
La Salud	4,896
Quivican	4,585
San Antonio de las Vegas	4,469
Santiago de las Vegas	12,081
San Felipe	2,313
Vereda Nueva	3,277
Total	301,884

By order of His Excellency, the President, this is published in the "Gaceta de la Habana" (Havana Gazette) for general information.

Habana, February 5, 1898.

The secretary,

JOSE CONGOSTO.

Appendix B.

The following letters from the files of the Treasury Department show its attitude and that of the State Department, and that Cuba has and is levying tariff duties on American goods, and that Cuba considers the reciprocity treaty to favor imports into the Isle of Pines from the United States:

September 26, 1905.

Mr. Robert W. Dunning,
507 Potomac avenue, Buffalo, N. Y.

Sir: The Department is in receipt of your letter of the 21st instant, in which you request to be informed as to the present status of the Isle of Pines and the probability of the same becoming a possession of the United States in the near future.

In reply I have to inform you that it is provided by the act of March 2, 1901, "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty," and that at the time of the withdrawal of the United States from Cuba as an intervening power it was agreed that the existing government of the Isle of Pines should continue as the de facto government pending the settlement of the title to said island by treaty.

A treaty has been pending before the United States Senate providing for the cession of said island to Cuba, but action thereon has not yet been

taken, and the Department is unable to inform you as to the probable future action thereon.

Respectfully,

(Sgd.) C. H. KEEP,
Assistant Secretary.

No inclosure.

DECEMBER 12, 1904.

MR. J. J. THORNBURGH,
c/o The Side Delivery Buncher Co.,
Toledo, Ohio.

SIR: In reply to your inquiry of the 3rd instant as to whether any duties are required to be paid on merchandise shipped from the United States to the Isle of Pines, I have to inform you that the customs laws of said country are administered by the Republic of Cuba, and that goods imported there will probably be subject to duty under the Cuban tariff of February 5, 1904.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG,
Acting Secretary.

No enclosure.

MAY 22, 1903.

J. FRED CLARKE, M. D.,
University of Iowa, Fairfield, Iowa.

SIR: Referring to your letter of February 9th last, I have to state that this Department is informed by the United States minister to Cuba, thru the Secretary of State, that jelly glasses imported into the Isle of Pines from the United States are dutiable under articles 10 and 11 of the

Cuban tariff according to whether they are ordinary glassware or crystal or glass imitating crystal.

A copy of said tariff is herewith inclosed.

No direct importation is made into the Isle of Pines, as said island has no port of entry. All merchandise intended for that island should be sent to the port of Batabano, Cuba.

Respectfully,

_____ _____,

Assistant Secretary.

One inclosure.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 13, 1903.

J. FRED CLARKE, M. D.,
State University of Iowa, Fairfield, Iowa.

SIR: In reply to that portion of your letter of the 9th instant, which relates to goods coming into the United States from the Isle of Pines, I have to state that the Department decided on August 6 last that duties should be assessed on such goods at the same rates as similar merchandise imported from other places, pending the determination of the title under the provision in the act of March 2, 1901 (31 Stat. L., 898), "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." Jelly made there would therefore be subject to duty if shipped to the United States, but duty would not be assessed on the glass coverings if of American manufacture.

Your inquiry regarding duties on jelly glasses going into said island from the United States will be the subject of another communication.

Respectfully,

(Sgd.) O. L. SPAULDING,
Assistant Secretary.

No inclosure.

No. 517.] LEGATION OF THE
UNITED STATES OF AMERICA,
Habana, Cuba, May 7, 1903.

The Honorable JOHN HAY,
Secretary of State, Washington, D. C.

SIR: I have the honor to acknowledge receipt of Department Instruction No. 191 of March 2, 1903, asking whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and, if so, what is the rate of duty thereof.

In reply I have to enclose herewith copy of a note from the foreign office, transmitting a report from the Secretary of the Treasury on the subject, translation of which is herewith enclosed, stating that the article in question pays duty under articles 10 and 11.

I am, sir, your obedient servant,

H. G. SQUIERS.

Enclosures: No. 1, Mr. Zaldo to Mr. Squiers, May 4, 1903; No. 2, Mr. Montes to Mr. Zaldo April 29, 1903.

[Translation.—Enclosure No. 1, Dispatch No. 517.]

No. 441.] DEPARTMENT OF
STATE AND JUSTICE,
Habana, May 4, 1903.

His Excellency HERBERT G. SQUIERS,
E. E. & M. P. of the U. S. of A.

Mr. MINISTER: Referring to your polite note, No. 204, of the 10th of last March, requesting information about the duty on jelly glasses exported from the United States to the Isle of Pines, I have the honor to forward herewith copy of a communication on the subject from the Secretary of the Treasury.

I take occasion to renew to your excellency the assurance of my high and distinguished consideration.

CARLOS DE ZALDO,
Secretary.

[Translation.—Enclosure No. 2, Dispatch No. 517.]

REPUBLIC OF CUBA,
TREASURY DEPARTMENT,
CUSTOM-HOUSE DIVISION,
Habana, April 29, 1903.

To the SECRETARY OF STATE AND JUSTICE.

Mr. SECRETARY: I hereby acknowledge receipt of your communication of the 13th of the present month, in which you ask "whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and if so, what is the rate thereof?"

In reply this Department informs you that common jelly glasses pay duty under article 10, and jelly glasses with glass tops or imitation of the same pay duty under article 11. No direct importation into the Isle of Pines is allowed, as the said island has no qualified port. All merchandise should be sent to the port of Batabano, which is the chief

port of that customs district, as I had the honor to inform you in a communication of March 28.

Yours, respectfully,

JOSÉ M. GARCIA MONTES,
Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, February 18, 1903.

The honorable the SECRETARY OF THE TREASURY.

DEAR SIR: I have received your letter of the 13th of February, asking for any information which I may be able to communicate on the subject of the Isle of Pines.

The act of March 2, 1901, which you quote, provides that "the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." On the 20th of May, the date when the United States withdrew from Cuba as an intervening power, Gen. Leonard Wood, military governor of Cuba, directed a communication to the President and Congress of the Republic of Cuba, in which the following words are contained: "It is understood by the United States that the present government of the Isle of Pines will continue as a de facto government pending settlement of the title to the said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States, approved March 2, 1901."

This Department has no information of any change in the status of the Isle of Pines since the above date. The island is under the administrative jurisdiction of the Republic of Cuba as a de

facto government by the official acts referred to above. No action has been taken to adjust by treaty the permanent title to the island.

Very respectfully, yours,

(Sgd.) JOHN HAY.

DEPARTMENT OF STATE,
Washington, March 2, 1903.

The honorable the SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of your Department's letter of the 25th ultimo, asking whether there is any duty on jelly glasses proceeding from the United States to the Isle of Pines, and, if so, what is the rate thereof.

The United States legation at Habana has been instructed to ascertain and report.

I have the honor to be, sir, your obedient servant,

(Sgd.) JOHN HAY.

JULY 9, 1904.

The honorable the SECRETARY OF STATE.

SIR: I have honor to acknowledge the receipt of your letter of the 25th ultimo, enclosing copy of a despatch from the legation at Habana, transmitting certain information in reply to the inquiries contained in my letter of May 14th last as to exportations to and importations from the Isle of Pines.

I note that it is stated in the despatch that the enclosed translation of the note from the Cuban secretary of state answers fully all inquiries, except as to the extent of the importations from the United States into said island, in regard to which a report is promised as soon as the necessary data

has been received from the Cuban treasury department.

Respectfully,

(Sgd.) H. A. TAYLOR,
Acting Secretary.

No enclosure.

DEPARTMENT OF STATE,
Washington, June 25, 1904.

The honorable the SECRETARY OF THE TREASURY.

SIR: Referring to your letter of the 14th ultimo, I have the honor to enclose herewith copy of a despatch from the legation at Habana forwarding commercial data in regard to the Isle of Pines.

I have the honor to be, sir, your obedient servant,

(Sgd.) JOHN HAY.

Enclosure: From Cuba, No. 983, June 14, 1904.

No. 983.]
LEGATION OF THE UNITED STATES OF AMERICA,
Habana, Cuba, June 14, 1904.

The honorable JOHN HAY,
Secretary of State, Washington, D. C.

SIR: I have the honor to acknowledge receipt of Department Instruction No. 391, of May 20, 1904, requesting certain information relative to the commerce of the United States with the Isle of Pines.

In reply I beg to enclose herewith translation of a note from Secretary of State Zaldo, to whom the matter was referred, answering fully all inquiries except as to the extent of the importations from the United States into the said island.

On this point he promises a report as soon as he

shall have received the necessary data from the treasury department.

I am, sir, your obedient servant,

JACOB SLEEPER,
Chargé d'Affaires ad interim.

[Enclosure in No. 983.—Translation.]

DEPARTMENT OF STATE AND JUSTICE,
Habana, June 6, 1904.

Mr. MINISTER: With reference to your excellency's polite note, No. 468, of May 27 last, in which, at the instance of your Government, you make certain inquiries relative to the commerce of the United States with the Isle of Pines, I have the honor to advise you that exportations and importations of merchandise may be made directly from the island to the United States, because there is a port of entry there, with a custom-house in charge of public officials, to which the present Cuban tariffs are applicable and which receive the benefits of the treaty of reciprocity, inasmuch as the said Isle of Pines, altho the treaty to that effect has not yet been approved by the American Senate, is considered by the Government as a part of the territory of the Republic of Cuba.

At the same time I beg to advise you that as soon as this Department receives the report which has been requested from the Treasury Department relative to the extent of the importations from the United States into the said island it will be at once communicated to you.

I avail myself of this occasion, etc.,

CARLOS DE ZALDO,
Secretary.

Excellency HERBERT G. SQUIERS,
Etc., etc., etc.

DEPARTMENT OF STATE,
Washington, May 20th, 1904.

The honorable the SECRETARY OF THE TREASURY.

SIR: I have the honor to acknowledge the receipt of the letter from your Department of the 14th instant, asking for certain information relating to direct importations into the United States from the Isle of Pines and into that island from this country and to the tariff treatment by Cuba of the latter importations, and expressing the desire to receive an expression of this Department's opinion as to the present status of the Isle of Pines.

In reply I beg to state that the government of the Isle of Pines is administered by the Government of Cuba, and that a treaty between this country and Cuba fixing the status of the Isle of Pines is now pending in the United States Senate.

With a view to securing definite and authoritative information in response to your Department's further inquiries, they have to-day been referred for consideration and report to the minister of the United States at Habana.

I have the honor to be, sir, your obedient servant,

(Sgd.) FRANCIS B. LOOMIS,
Acting Secretary.

MAY 14, 1904.

The honorable the SECRETARY OF STATE.

SIR: I have the honor to request information upon the following points, to wit:

1. Are direct importations from the United States made into the Isle of Pines; and if so, to what extent and under what tariff?

2. If such importations are made under the Cuban tariff, do they, as a matter of fact, enjoy the benefit of the Cuban reciprocity treaty with the United States?

3. Are exports made from the Isle of Pines direct to the United States?

I should be pleased to receive an expression of your opinion as to the present status of the Isle of Pines.

Respectfully,

(Sgd.) H. A. TAYLOR,
Acting Secretary.

(No inclosure.)

MARCH 14, 1904.

Mr. CHARLES A. REDMOND,
531 Vine St., Cincinnati, Ohio.

SIR: Referring to your letter of the 5th ultimo concerning importations of lumber and fruit from the Isle of Pines, I will state that the Department is in receipt of a communication from the Secretary of State, from which it appears that there has been no change in the status of the Isle of Pines by reason of the failure of the United States Senate to ratify the Isle of Pines treaty within the limit of time provided for ratification in the treaty itself; that when Cuba was evacuated the Isle of Pines was turned over to the Cuban Government, subject to its eventual disposition by treaty; that a new treaty, identical in all respects with the one which failed of ratification, has been signed and will be transmitted to the Senate, and that pending action thereon this Government claims no jurisdiction over the Isle of Pines.

In view of the foregoing, I have to advise you that lumber and fruit imported into this country from the Isle of Pines are subject to the rates of duty provided in the tariff act of July 24, 1897, a copy of which is herewith enclosed.

While it is presumed that articles brought into Cuba from the Isle of Pines are not subject to duty, yet, in order to obtain authentic information on that point, your question should be addrest to the Cuban Cuban Government.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG.

One enclosure.

DEPARTMENT OF STATE,
Washington, March 2, 1904.

DEAR SIR: I have received your letter of the 27th of February in regard to the Isle of Pines:

There is no change in the status of the Isle of Pines by reason of the failure of the Senate to ratify the Isle of Pines treaty within the limit assigned for ratification in the treaty itself. When Cuba was evacuated, the Isle of Pines was turned over to the Cuban Government, subject to its eventual disposition by treaty. A new treaty, identical in all respects with the one which failed of ratification, has been signed to-day, and will be at once sent to the Senate. Pending action thereon this Government claims no jurisdiction over the Isle of Pines.

I am, sir, very truly, your obedient servant,

(Sgd.) JOHN HAY.

The honorable the SECRETARY OF THE TREASURY.

FEBRUARY 27, 1904.

The honorable the SECRETARY OF STATE.

SIR: In view of the announcement in the public press that the Isles of Pines treaty has failed of ratification, owing to the expiration of the time limit within which the treaty should have been ratified, I have the honor to request that this Department be informed as to the status of said island under existing conditions, and particularly whether our Government claims jurisdiction over said territory until such time as a treaty defining its status shall have been ratified.

The foregoing information is desired to enable this Department to answer an inquiry concerning the tariff laws applicable to the Isle of Pines.

Respectfully,

(Sgd.) ROBERT B. ARMSTRONG,
Acting Secretary.

(No inclosure.)

[Press announcement.]

ISLE OF PINES TREATY.

FAILURE OF RATIFICATION ATTRIBUTED IN HAVANA TO OVERSIGHT.

HAVANA, *Feb. 25.*

The lapsing of the Isle of Pines treaty on account of its not being ratified within the time limit is regarded here to be mainly due to the fact that the State Department at Washington did not call attention to the matter. It would also appear, however, that the Cuban state department failed to remember this time limit.

The treaty was signed in Havana July 2, 1903, and was ratified by the Cuban senate on July 16, since when it has been pending in the United

States Senate. The last condition of the treaty was to the effect that the ratification be exchanged in Washington within seven months of the date of signing.

Persons interested in securing American sovereignty for the Isle of Pines are jubilant at this development, considering it to be a setback which gives additional promise of the final defeat of the proposition that the island remain under Cuban sovereignty.

CINCINNATI, O., *2/5/04*.

DEAR SIRS: Will you kindly direct this letter to where the following questions will be answered.

Does lumber and fruit in the raw state from Isle of Pines (south of Cuba) enter United States ports free of duty? If not, what is the duty?

Is same, Isle of Pines, still U. S. property? If not, does lumber and fruit enter Cuba free of duty?

Are not United States citizens given more protection and freedom on Isle of Pines than people of different nationalities, other than natives? If not under U. S. protection, are Americans subject to any special tax not imposed on natives? If there are any pamphlets bearing on same, kindly send or advise me of same; also, would be pleased for any information pertaining to above.

Hoping this will receive your immediate attention, I remain,

Respectfully, yours,

CHAS. A. REDMOND,
531–533 Vine St., Cincinnati, Ohio.

P. S.—Probably a little explanation would help. I am thinking of investing in some timber land and expect to cultivate same land after cleared.

9976—06——7

O

Supreme Court of the United States.

No. 1.—October Term, 1906.

Edward J. Pearcy, Plaintiff in Error, vs. Nevada N. Stranahan. } In error to the Circuit Court of the United States for the Southern District of New York.

[April 8, 1907.]

Mr. Chief Justice Fuller delivered the opinion of the Court:

Plaintiff brought his action in the Circuit Court of the United States for the Southern District of New York against the then collector of the port of New York to recover the value of certain cigars seized by him, which had been brought to that port from the Isle of Pines, where they had been produced and manufactured. This seizure was made under the Dingley Act, so called, (Act July 24, 1897, 30 Stat. 151, c. 11,) and the regulations of the Secretary of the Treasury thereunder. The Dingley Act provided for the imposition of duties "on articles imported from foreign countries," and in plaintiff's complaint it was asserted that the Isle of Pines was "in possession of and part of the United States," and hence domestic territory. The Government demurred, the demurrer was sustained, the complaint dismissed and the case brought here on a writ of error.

Whether the Isle of Pines was a part of the United States is a conclusion of law not admitted by the demurrer. It was certainly not such before the treaty of peace with Spain, and, if it became so, it was by virtue of that treaty. The court takes judicial cognizance whether or not a given territory is within the boundaries of the United States, and is bound to take the fact as it really exists, however it may be averred to be. *Jones* v. *United States*, 137 U. S. 202; *Lincoln* v. *United States*, 197 U. S. 417; *Taylor* v. *Barclay*, 2 Sim. 213.

August 12, 1898, a protocol of agreement for a basis for the establishment of peace was entered into between the United States and Spain, which provided:

"Article I. Spain will relinquish all claim of sovereignty over and title to Cuba.

"Article II. Spain will cede to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrones to be selected by the United States." (30 Stat. 1742.)

This was followed by the treaty of peace, ratified April 11, 1899, containing the following articles:

"ARTICLE I. Spain relinquishes all claim of sovereignty over and title to Cuba.

"And as the island is, upon its evacuation by Spain, to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may under international law result from the fact of its occupation, for the protection of life and property.

"ARTICLE II. Spain cedes to the United States the island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones." (30 Stat. 1754–1755.)

In *Neely* v. *Henkel*, 180 U. S. 109, (Jan. 14, 1901,) the question was whether Cuba was a foreign country or foreign territory within the act of Congress of June 6, 1900, (31 Stat. 656, c. 793,) providing for the extradition from the United States of persons committing crimes within any foreign country or foreign territory or any part thereof, occupied or under the control of the United States. And it was held that Cuba was within this description. Mr. Justice Harlan, delivering the opinion of the court, said:

"The facts above detailed make it clear that within the meaning of the act of June 6, 1900, Cuba is foreign territory. It cannot be regarded, in any constitutional, legal or international sense, a part of the territory of the United States.

"While by the act of April 25, 1898, declaring war between this country and Spain, the President was directed and empowered to use our entire land and naval forces, as well as the militia of the several States to such extent as was necessary, to carry such act into effect, that authorization was not for the purpose of making Cuba an integral part of the United States but only for the purpose of compelling the relinquishment by Spain of its authority and government in that island and the withdrawal of its forces from Cuba and Cuban waters. The legislative and executive branches of the Government, by the joint resolution of April 20, 1898, expressly disclaimed any purpose to exercise sovereignty, jurisdiction or control over Cuba 'except for the pacification thereof,' and asserted the determination of the United States, that object being accomplished, to leave the government and control of Cuba to its own people. All that has been done in relation to Cuba has had that end in view and, so far as the court is informed by the public history of the relations of this country with that island, nothing has been done inconsistent with the declared object of the war with Spain.

"Cuba is none the less foreign territory, within the meaning of the act of Congress, because it is under a military governor appointed by and representing the President in the work of assisting the inhabitants of that island to establish a government of their own, under which, as a free and independent people, they may control their own affairs without interference by other nations. The occupancy of the island by troops of the United States was the necessary result of the war. That result could not have

been avoided by the United States consistently with the principles of international law or with its obligations to the people of Cuba.

"It is true that as between Spain and the United States—indeed, as between the United States and all foreign nations—Cuba, upon the cessation of hostilities with Spain and after the treaty of Paris was to be treated as if it were conquered territory. But as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba to whom it rightfully belongs and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action."

If then the Isle of Pines was not embraced in article II of the treaty, but was included within the term "Cuba" in article I, and therefore sovereignty and title were merely relinquished, it was "foreign country" within the Dingley act.

This inquiry involves the interpretation which the political departments have put upon the treaty. For, in the language of Mr. Justice Gray, in *Jones* v. *United States*, "who is the sovereign, *de jure* or *de facto*, of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any Government conclusively binds the judges as well as all other officers, citizens, and subjects of that Government."

By the joint resolution of April 20, 1898, (30 Stat. 738,) entitled "Joint resolution for the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and Government in the Island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect," the United States disclaimed any disposition or intention to exercise sovereignty or control over Cuba, except in the pacification thereof, and asserted its determination, when that was accomplished, to leave the control of the island to its people. What was the signification of the word "Cuba" at that time?

The record of the official acts of the Spanish Government from 1774 to 1898 demonstrates that the Isle of Pines was included in the political division known as "Cuba." The first official census of Cuba, in 1774; the "Statistical Plan of the Ever Faithful Isle of Cuba for the Year 1827;" the establishment by the Governor General, in 1828, of a colony on the island; the census of 1841; the budgets of receipts and expenses; the census for 1861, 1877, 1887, and so on, all show that the Isle of Pines was, governmentally speaking, included in the specific designation "Cuba" at the time the treaty was made and ratified, and the documents establish that it formed a municipal district of the province of Habana.

In short, all the world knew that it was an integral part of Cuba, and in view of the language of the joint resolution of April 20, 1898, it seems

clear that the Isle of Pines was not supposed to be one of the "other islands" ceded by article II. Those were islands not constituting an integral part of Cuba, such as Vieques, Culebra and Mona Islands adjacent to Porto Rico.

Has the treaty been otherwise interpreted by the political departments of this Government? The documents to which we have had access, with the assistance of the presentation of the facts condensed therefrom in the brief for the United States, enable us to sufficiently indicate the situation in that regard, and we think it proper to do this, notwithstanding the determination of the case turns at last on a short point requiring no elaboration.

The Spanish evacuated Havana January 1, 1899, and the government of Cuba was transferred to a military governor as the representative of the President of the United States. The President ordered, August 17, 1899, a census to be taken as a first step toward assisting "the people of Cuba" to establish "an effective system of self-government." In accomplishing this the island was divided into 1,607 enumeration districts. Three enumerators took the census of the Isle of Pines, which was described as a municipal district of the judicial district of Bejucal, in the Province of Havana. The report on the census, as published by the War Department in 1900, stated: "The government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines, lying directly to the south of it, and more than a thousand islets and reefs scattered along its northern and southern coasts. . . . The Isle of Pines, with an area of 840 square miles, is a municipal district of the Province of Habana. . . . The total population of Cuba, including the Isle of Pines and the neighboring keys, was, on October 16, 1899, 1,572,797."

The population tables give the population of the Isle of Pines as a municipal district of Havana Province, and so of the statistics as to rural population; sex, nativity and color; age and sex; birthplace; conjugal condition; school attendance; foreign whites; number and size of families; dwellings of families—these and like items are given as to the Isle of Pines as under the Province of Habana.

In August, 1899, the Military Governor of Cuba appointed a mayor and first assistant mayor of the Isle of Pines.

On June 16, 1900, an election was held throughout the island, at which the people of Cuba in all their municipalities elected their municipal officers, participated in by the inhabitants of the Isle of Pines, as is stated in the report of the Committee on Foreign Relations, Senate Document No. 205, Fifth-ninth Congress, though this was denied in a minority report.

A constitutional convention was called and the inhabitants of the Isle of Pines participated in the election of delegates thereto, September 15, 1900.

The convention concluded its work by October 1, 1901, and December 31, 1901, an election was held to choose governors of provinces, provincial councillors, members of the house of representatives, and presidential and senatorial electors, under an order of General Wood of October 14, 1901, No. 218, approved by the War Department, which divided the Province of Habana into four circuits, the third being composed of several ayuntamientos, of which the Isle of Pines was one.

February 24, 1902, the electors met, chose senators, and elected Senor Palma, President, and Senor Romero, Vice President.

The government was transferred to Cuba, May 20, 1902, and in making the transfer, and declaring the occupation of Cuba by the United States and the military government of the island to be ended, the Military Governor wrote to "The President and Congress of Cuba," among other things: "It is understood by the United States that the present government of the Isle of Pines will continue as a *de facto* government, pending the settlement of the title to said island by treaty, pursuant to the Cuban constitution and the act of Congress of the United States approved March 2, 1902[1]." On the same day President Palma replied:

"It is understood that the Isle of Pines is to continue *de facto* under the jurisdiction of the government of the Republic of Cuba, subject to such treaty as may be entered into between the Government of the United States and that of the Cuban Republic, as provided for in the Cuban constitution and in the act passed by the Congress of the United States, and approved on the 2d of March, 1901." (31 Stat. 897.)

At that date the Isle of Pines was actually being governed by the Cubans through municipal officers elected by its inhabitants, and a governor of the Province of Habana, councillors, etc., in whose choice they had participated. And see *Neely* v. *Henkel*, 180 U. S. 109, 117, 118.

February 16, 1903, the Senate of the United States, by resolution, requested the President "to inform the Senate as to the present status of the Isle of Pines, and what government is exercising authority and control in said island."

In reply the President submitted a report from the Secretary of War, which stated:

"The nature of the *de facto* government under which the Isle of Pines was thus left pending the determination of the title thereof by treaty is shown in the following endorsement upon a copy of the said resolution by the late military governor of Cuba:

[Here follows the endorsement, dated February 20, 1903, of which the following is a part:]

'At the date of transfer of the Island of Cuba to its duly elected officials the Isle of Pines constituted a municipality included within the municipalities of the Province of Habana and located in the judicial district of

Bejucal. The government of the island is vested in its municipal officers, subject to the general control of the civil governor of the Province of Habana, who is vested under the constitution of Cuba with certain authority in the control of municipal affairs. Under the military government of Cuba the Isle of Pines was governed by municipal officials, subject to the general authority of the civil governor, who received his authority from the Governor General. The Isle of Pines, as it had existed under the military government, was transferred as a *de facto* government to the Cuban Republic, pending the final settlement of the status of the island by treaty between the United States and Cuba. The action taken by the military government was in accordance with telegraphic orders from the honorable the Secretary of War. The government of the island to-day is in the hands of its municipal officers, duly elected by the people under the general control of the civil governor of the Province of Habana and the Republic of Cuba. As I understand it, the government of the Isle of Pines is vested in the Republic of Cuba, pending such final action as may be taken by the United States and Cuba looking to the ultimate disposition of the island. No special action was taken to protect the interests of the citizens of the United States who have purchased property and have settled in the Isle of Pines, for the reason that no such action was necessary. All Americans in the island are living under exactly the same conditions as other foreigners, and if they comply with the laws in force it is safe to say that they will not have any difficulty or need special protection. At the time these people purchased property they understood distinctly that the question of ownership of the Isle of Pines was one pending settlement, and in locating there they took the risks incident to the situation.'"

We are justified in assuming that the Isle of Pines was always treated by the President's representatives in Cuba as an integral part of Cuba. This was indeed to be expected in view of the fact that it was such at the time of the execution of the treaty and its ratification, and that the treaty did not provide otherwise in terms, to say nothing of general principles of international law applicable to such coasts and shores as those of Florida, the Bahamas, and Cuba. Hall (4th ed.) 129, 130; *Louisiana* v. *Mississippi*, 202 U. S. 1, 53; *The Anna*, 5 C. Rob. 273.

In August, 1902, the Treasury Department decided that duties should be assessed on goods coming from the Isle of Pines at the same rates as on similar merchandise imported from other places.

On July 2, 1903, a treaty with Cuba was signed, relinquishing any claim by the United States to the Isle of Pines under the treaty of peace, but this failed of ratification, and on March 2, 1904, another treaty was signed, which relinquished all claim of title under that treaty.

November 27, 1905, the Secretary of State wrote an American resident of the Isle of Pines:

"The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. In my judgment the United States has no substantial claim to the Isle of Pines.

The treaty merely accords to Cuba what is hers in accordance with international law and justice.

"At the time of the treaty of peace which ended the war between the United States and Spain, the Isle of Pines was and had been for several centuries a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation."

There are some letters of an Assistant Secretary of War or written by his direction, and other matters, referred to, which we do not regard as seriously affecting the conclusion that the Executive has consistently acted on the determination that the United States had no substantial claim to the Isle of Pines under the treaty.

The only significant legislative action is found in the proviso of the act of March 2, 1901, the Army Appropriation Act (31 Stat. 895, c. 803), commonly called the Platt amendment (897), which reads:

"Provided further, That in fulfillment of the declaration contained in the joint resolution approved April twentieth, eighteen hundred and ninety-eight, entitled 'For the recognition of the independence of the people of Cuba, demanding that the Government of Spain relinquish its authority and government in the island of Cuba, and to withdraw its land and naval forces from Cuba and Cuban waters, and directing the President of the United States to use the land and naval forces of the United States to carry these resolutions into effect,' the President is hereby authorized to 'leave the government and control of the island of Cuba to its people' so soon as a government shall have been established in said island under a constitution which, either as a part thereof or in an ordinance appended thereto, shall define the future relations of the United States with Cuba, substantially as follows:"

Then follows eight clauses, of which the sixth is:

"VI. That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

It appears that certain American citizens, asserting interests in the Isle of Pines, had contended that it belonged to the United States under the treaty, and the sixth clause of the Platt amendment, while not asserting an absolute claim of title on our part, gave opportunity for an examination of the question of ownership and its settlement through a treaty with Cuba. The Republic of Cuba has been governing the isle since May 20, 1902—the present situation need not be discussed—and has made various improvements in administration at the suggestion of our Government, but Congress has taken no action to the contrary of Cuba's title as superior to ours.

It may be conceded that the action of both the political departments has not been sufficiently definite to furnish a conclusive interpretation of

the treaty of peace as an original question, and as yet no agreement has been reached under the Platt amendment. The Isle of Pines continues at least *de facto* under the jurisdiction of the government of the Republic of Cuba, and that settles the question before us, because as the United States have never taken possession of the Isle of Pines as having been ceded by the treaty of peace, and as it has been and is being governed by the Republic of Cuba, it has remained "foreign country" within the meaning of the Dingley act according to the ruling in *De Lima* v. *Bidwell*, 182 U. S. 1, and cases cited; *United States* v. *Rice*, 4 Wheat. 246. There has been no change of nationality for revenue purposes, but, on the contrary, the Cuban Government has been recognized as rightfully exercising sovereignty over the Isle of Pines as a *de facto* government until otherwise provided. It must be treated as foreign, for this Government has never taken, nor aimed to take, that possession in fact and in law which is essential to render it domestic.

Judgment affirmed.

Mr. Justice McKenna concurred in the judgment.
Mr. Justice White and Mr. Justice Holmes concurred specially.
Mr. Justice Moody took no part.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 1.—October Term, 1906.

Edward J. Pearcy, Plaintiff in Error, vs. Nevada N. Stranahan. } In error to the Circuit Court of the United States for the Southern District of New York.

[April 8, 1907.]

Mr. Justice White concurring.

My reasons for agreeing to the conclusion announced by the court are separately stated to prevent all implication of an expression of opinion on my part as to a subject which in my judgment the case does not require and which, as it is given me to see it, may not be made without a plain violation of my duty.

The question which the case raises, by way of a suit to recover duties paid on goods brought from the Isle of Pines, is whether that island, by the treaty with Spain, became a part of the United States, or was simply left or made a part of the Island of Cuba, over which the sovereignty of Spain was relinquished.

I accept the doctrine which the opinion of the court announces, following *Jones* v. *United States*, 137 U. S. 202, that "who is the sovereign *de jure* or *de facto* of a territory is not a judicial but a political question, the determination of which by the legislative and executive departments of any government conclusively binds the judges as well as other officers, citizens and subjects of that government." That the legislative and executive departments have conclusively settled the present status of the Isle of Pines as *de facto* a part of Cuba and have left open for future determination the *de jure* claim, if any, of the United States to the island, as the court now declares, is to me beyond possible contention. Thus, by the amendment to the act of 1891, which was enacted to determine the *de facto* position of the island and to furnish a rule for the guidance of the executive authority in dealing in the future with the island, it was expressly provided "that the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty." So, also, when the Island of Cuba was turned over to the Cuban government by the military authority of the United States, that government was expressly notified by such authority, under the direction of the President, that whilst the *de facto* position of the Isle of Pines as a part

of Cuba was not disturbed it must be understood that its *de jure* relation was reserved for future determination by treaty between Cuba and the United States. And this notification and relation was in terms accepted by the President of the Republic of Cuba. If the opinion now announced stopped with these conclusive expressions I should of course have nothing to say. But it does not do so. Although declaring that the *de facto* position of the Isle of Pines as resulting from legislative and executive action is binding upon courts, and although referring to the conclusive settlement of that *de facto* status and the reservation by the legislative and executive departments of the determination of the *de jure* status for future action, the opinion asserts that it is open and proper for the court to express an opinion upon the *de jure* status, that is, to decide upon the effect of the treaty. In doing so it is declared that all the world knew that the Isle of Pines was an integral part of Cuba, this being but a prelude to an expression of opinion as to the rightful construction of the treaty. To my mind any and all expression of opinion concerning the effect of the treaty and the *de jure* relation of the Isle of Pines is wholly unnecessary and cannot be indulged in without disregarding the very principle upon which the decision is placed, that is, the conclusive effect of executive and legislative action. In other words, to me it seems that the opinion, whilst recognizing the force of executive and legislative action, necessarily disregards it. This follows, because the views which are expressed on the subject of the meaning of the treaty amount substantially to declaring that the past action of the executive and legislative departments of the government on the subject have been wrong, and that any future attempt by those departments to proceed upon the hypothesis that the *de jure* status of the island is unsettled will be a violation of the treaty as now unnecessarily interpreted.

Mr. Justice HOLMES concurs.

True copy.

Test:

Clerk Supreme Court, U. S.